Govt. II-27—20,006—16-11-40

Development (1946) Department.

SERIES.

G.O. No. 626

Dated 9-2-46

[Despatch Abstract.]

Suits — Kollegal Silk Fibres Ltd — O.S
[illegible] on contop Dt. Judge, Coimbatore
ded against Govt. of Madras. Defence
pers Recorded.

Memo no. [illegible] D/45 dtd 21.2.45

Subject: Suit - Kollegal Silk Relating Ltd - Suit filed against the Govt of Madras - against acquisition of properties for the Army Defence.

Ref: G.O. no. 1/48 (75) Revenue

In the Govt. pleader requested to state in the Draft written Statement mentioned in para 2 of the G.O. cited that the written Statement has to be filed in the Court of the Subordinate Judge, Coimbatore before 12.3.45

20/2/45

To the Govt. Pleader, Coimbatore (through the Collector)

Copy to the D. Dtd

R 4.3.45 Dpd

Memo no. 11903 D/45-2 d 3.3.45

Sub: Suits - Kolliyat Sthe Tilakam Ltd - Suit filed against the Govt of Madras against acquisition of properties by the firm - Defence - regd

Ref: Govt Memo no. 11903 D/45-1 d 21.2.45

p/l above

The Addl Govt Pleader, Coimbatore, is requested to expedite his reply to the memo cited. The written statement has to be filed in the Court before 12.3.45.

Sd/ M/s on p/l

Sd/ 2.3.45

To The Govt. Pleader Coimbatore (Through the Dt Magistrate - Collector of Coimbatore)

Copy of the D.O. dt R 8.3.45

To Addl Govt.

No reply from the Govt Pleader, Coimbatore is received yet. A draft telegraphic memo is submitted below for approval

Sd/ 5.3.45

Express Telegram No 1190-3-D/45-3 dated 5.3.45 received 5.30 pm

From Govt Pleader — Copy to Collector Coimbatore.
To Coimbatore.

Please refer memorandum 1190-3-D/45-1, dated 1st February regarding submission draft statement in case against Kallakal Silk Weavers Limited Stop Reply telegraphically whether statement ready and when it may be expected Stop Hearing fixed twelfth March urgent action essential Repeated Collector Devment

8.3.45

8.3.45

Rem. No. IIA. 11903/D/45.

Subject — Civil — Original Suit Fisheries IIA —

Suit filed against the Govt. of Madras by the

Collector of Fisheries by the firm — Defence

Report and Parawise No. IIA 11903/D/45, dt. 21.2.45 and

Memorandum of Arguments dt. for the

Govt. Pleader, Coimbatore

received to submit the reply to the memo

dated for the Statement in the enclosed very

urgently to be filed in the Court before 22.3.45

dt. 7.3.45.

Sd/-

8/3/45

To

The Govt. Pleader,

Coimbatore (through

the Dt. Magistrate &

Collector of Coimbatore

copy to the DIFC.

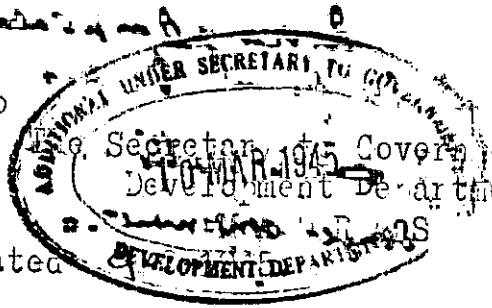
From

S. J. Sivanandam, B.A.,
AS Collector-in-charge,
Coimbatore.

To

The Secretary to Government,
Development Department,

Ref.1262/44.K3 dated



LAND Acquisition - Kollegal Taluk - Silk Filatures - Case pending before Arbitrator - Filing of statement,- report - submitted.

****

Ref:Govt. Order No. Ms. 118 Development Department dated 12-1-45
Govt. memo. No.11003-D/45-1 dated 21-2-45.
Govt. memo. No.11003-D/45-2 dated 3-3-45 and Telegram 8-3-45

The Government Pleader, Coimbatore reports that he will enter appearance in court on 12-3-1945 and take time for filing the written statement. He promises to send the draft written statement next week. I shall also see that it is done. The Government Pleader has already also sent a telegram to Government to-day.

for Collector-in-charge.

ICM.S.S.

9345

b/

1 Addl. U.S. Advocate Amphlett, submitted for perusal. The Govt. pleader may be reminded on 16.3.45, if necessary, for the despatch statement.

10.3.45 10/3/45

10/3/45

Dev Dept

11903 21.

FORM F-III.—R

Class

(Signature of person granting tick

Name of holder	Amount distributed	Initial of distri... and date

October.	November.	December.

Note.—All entries sh

tpw

W.S. H. L. E.

15995 P/45

O. R. H. Coimbatore 4 (Two adds) 48

ADDITIONAL UNDER SECRETARY TO GOVERNMENT
11 MAR 1945
DEVELOPMENT DEPARTMENT

Development Department Madras

MADRAS
9 MAR

Rec'd 10/3 9 P.

Refer 11903d45 original suit number 285 against government by Kollegal Silk filatures I shall enter appearance on twelfth march and take time pending draft statement next week

Government Pleader

A. P. INDIAN POSTS AND TELEGRAPHS DEPARTMENT. No._____

If the telegram is prepaid the Stamps must be affixed by the Sender at the back of the form.

Class / refix } ..... Code..... **Form for Press Telegrams only.**

From (Sender's Name, Office of Origin and Service Instructions.).	Inst. No.	Sent at	To	By	L. N.
To (1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					

G.F. 22.

15990 D/45

Industries and Commerce Department

From (Name) A. Khaleeli Esq., I.C.S;

Designation Director of Industries and Commerce,

Station Chepauk, M a d r a s.

Received 12 MAR 1945 Registered

To The Secretary to Government,

Development Department

Enclosures:

No. D 1- 2160-45 dated 10th March 1945;

Sir,

Sub: Industries - Kollegal Silk Filature Ltd. - Suit filed against the Government of Madras against acquisition of properties by the firm.

Ref: Government Memorandum No. 11903-D/45-2 dated 3rd March 1945 addressed to the Government Pleader Coimbatore.

I submit for the information of Government a copy of the telegram received today from the Government Pleader, Coimbatore.

for Director of Industries and Commerce.

MLM/10.3.

P.t.o.

C11903D/45

Copy of telegram (received on 10-3-45)from the Government Pleader, Coimbatore.

" Reference 11903 d.45 -Original suit number 285 against Government by Kollegal silk filatures.I shall enter appearance on twelfth march and take time sending draft statement next week -"

/True copy/

MLM/10.3

Mi 10/3.

Dev. Dept.

To Addl. S.

May be filed with connected papers. The Govt Pleader has to be reminded on 16.3.45 as already ordered at p 6 above.

Sen for perusal.

16/3/45

16/3/45

Pl. issue urgent

Memo no. 11903 D/45-4 d 20.3.45

Sub: Suit - Kollegal Silk Filatures Ltd. - Suit filed against the Govt of Madras against acquisition of properties of the Town Defence

Ref: From the Govt. Pleader, Telegram d 9.3.45

The Govt. Pleader is requested to expedite the submission of the draft statement promised in the telegram cited

To: The Govt. Pleader
/ Coimbatore (through the Dt.
Copy to the Dt. Magistrate of Coimbatore)

...NDAVAM CHETTIAR, B. A., B. L.,
ADVOCATE
AND
GOVERNMENT PLEADER.

1955UD/45

COIMBATORE,
3- 1945

ADDITIONAL UNDER SECRETARY TO GOVERNMENT
22 MAR 1945
DEVELOPMENT DEPARTMENT

To.

The Secretary to the Government (Development Department)
Madras.

Your Ref. No. :- G.O. No. Ms 148 dated 12.1.1945.

Subject :- Original Suit No. 285 of 1944, Sub Court, Coimbatore Kollegal Silk Filatures.

Sir,

I am enclosing herewith copies of the draft written Statements & the Opinion. The suit has been adjourned from 12-3-45 to 29-3-45, for filing the written Statement. The fair written Statement may be signed in the two places marked in ~~red~~ blue pencil, and sent to me, for the same in court.

K. Thandavam
Govt Pleader

From

K. Thandavam Chettiar,
Government Pleader, Coimbatore.

To

The Secretary to the Government
Development Department, Madras.

Sir,

Subject:- Your Ref. No. G.O.No. Ms. 148 dated 12- 1- 1945
Original Suit No. 285 of 1944, Sub Court, Coimbatore

The Kollegal Silk Filatures Ltd. Plaintiff.

The Province of Madras ... Defendant.

The Kollegal Silk Filatures Ltd. has filed a suit in O.S.No. 285 of 1944 against the Government for a declaration that the requisition and acquisition of the moveable and immoveable properties of the Company are illegal and beyond the powers of the Government, for an order directing the Government to deliver possession of the properties to the plaintiff immediately, or 6 months after the termination of the war, for an order directing the Government to pay Rs. 61,500/- as damages, and for an order for costs of suit and subsequent interest in favour of the plaintiffs. The suit in O.S.No. 285 of 1944 has been withdrawn from the file of the Sub-Court, Coimbatore, to the file of the District Court, Coimbatore, and registered as O. S. No. 1 of 1945 in the the District Court, Coimbatore.

I. Facts of the case.

2. The Kollegal Silk Filatures Limited is a limited company registered under the Indian Companies Act. The company was formed in 1937, and it commenced to purchase additional Machinery and to put up new buildings from 1938 onwards. Messrs. F.L. Silva & Sons were the managing agents of the Company from 1937 onwards. Some of the share-holders found that the Managing Agents were not conducting the business properly, and were misappropriating large sums, belonging to

the company. A resolution was passed by the company, to remove Messrs. Silva & Sons from the managing Agency; and a complaint was laid against Mr. Silva and his sons for mis appropriation of the funds belonging to the Company. On -- account of inefficient management, the Company was incurring losses. But for the acquisition, the company would have been liquidated, and the share-holders might not have been able to get even 50 per cent of the share amounts.

Meanwhile on account of the war situation, the Government of India was in need of reeled silk of good quality for parachute fabric. The Government of India (Department of supply) -- entered into a contract with the Company, under which the Company agreed to supply 40000 lbs. of silk at Rs. 15-10-0 per lb. within 31-12-1942. The Government of India paid ~~about Rs. 1,00,000~~/- Rs 145000 as advance to the company, in order that the company may ~~stand~~ speed up the production, and may supply the - required ~~quality and~~ quantity of silk to the Government. In spite of the liberal and substantial assistance given by the Government, the company was not able to supply even 1/3 of the quantity of the silk as agreed upon, by the company ~~in~~ from Apr 1942, to December 1942.

The Government were therefore obliged to pass an order on 12-3 for requisition of the moveable and immoveable properties of the Company. The Government took possession of the properties on 16- 3- 1943.

After the properties were delivered to the Government, they wer placed under the charge of Mr. Peychaud. After taking charge of properties, it was found that the machinery waa in a very bad condition, that the management hitherto had been totally inefficient, that no proper arrangement had been made for -- maintaining the necessary stock of cocoon, fuel etc. and that

a considerable amount ^ (would) required to be spent by the Government to bring the factory into efficient working order.

The Government were therefore ^ (obliged) to pass an order on 30-3-1943, for acquisition of the above said moveable and immoveable properties of the Company. The notice of acquisition of the properties of the company was duly served on the company.

The Government entered into aorrespondence with the company in order to fix the fair and proper amount of compensation for the moveable and immoveable properties acquired by the Government. Though the above said properties were not worth ore than Rs. 50,000/-, the Government, in view of thefact, hat it was a compulsory acquisition, practically accepted he figures mentioned in the balance sheets of the Company, nd offered a high figure of Rs.79961- 7- 0 as compensation o the Company. As the Company did not accept to receive he said amount as compensation, the matter was referred to rbitration under Section 19 of the Defence of India Act to he District Judge of Coimbatore.

The above said reference was registered as C. C. 2 of 1944 in the District Court, Coimbatore. The enquiry was practically over in the said proceedings, when the company filed a suit in O. S. No. 285 of 1944 in the Sub Court, Coimbatore The company also x filed a petition before the arbitrator for stay of further proceedings in C.C.No. 2 of 1944, until the disposal of O. S. No. 285 of 1944. The said application was allowed and the proceedings in C.C.No. 2 of 1944 has been withdrawn from the file of the Sub-Court to the District Court and registered as O.S.No. 1 of 1945.

In the plaint, the company states that the Government were not entitled to take proceedings under Rule 75 A of the

Defence of India Rules, and that the only rule which would be applicable to this case is Rule 81, under which, according to the company, the properties of the company could not ~~be acquisitioned by~~ be acquired by the Government. The company also makes a claim for damages at the rate of Rs. 3,000/- per year. The company has also prayed for recovery of possession of the properties immediately, or 6 months after the termination of the war.

II. Merits of the case.

10. The company contends in the first instance that it comes under the heading of "Industrial undertaking" and that such ~~all~~ undertaking cannot be acquired by the Government under the Defence of India Act. The second contention raised by the plaintiff is that it is entitled to claim damages from the Government at Rs. 3,000/- per year from 16-3-1943.

Rule 75 A deals with the procedure to be adopted in requisitioning and acquiring properties moveable and immoveable. As the properties of the company consisted of moveable and immoveables ~~properties~~ the Government passed orders, first for requisitioning the properties, and secondly for acquisition of the same properties under Rule 75 A.

Rule 81 deals with the control which may be ~~revised~~ exercised by the Government, over industries. Undertaking is defined as one by way of any trade or business, including the occupation of handling, loading and unloading of goods, in the course of transport. Various provisions are contained in Rule 81 for control of the management or administration of the undertakings. There is no specific clause in Rule 81, empowering the Government to acquire undertakings, as such. On the basis of this alleged omission in Rule 81, the company contends, that the Government are not empowered to

acquire the properties of the Company.

3. But, the company has, for reasons of its own, ignored the provisions in Sec. 299 of the Government Of India Act. Sec. 299 provides, that the Federal and Provincial Government have power to authorise compulsory acquisition for public purposes any land or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, provided that the Government make provision for payment of compensation for the property acquired. This provision makes it clear, beyond doubt, that the Government are entitled to acquire the properties of a commercial or industrial undertaking, provided the Government pays compensation to the owners of the undertakings.

That sec. 299 of the Government of India Act was kept in view by the Governor—General, when the Defence of India Act was passed, is clear from Sec. 19 of the latter Act. Under Section 19 of the Defence of India Act, it is specifically provided, that compensation shall be determined and paid in respect of acquisition of properties, described in Sec. 299 of the Government of India Act. It would therefore follow, that the Defence of India Act contemplates acquisition of the properties of commercial or industrial undertakings also. There is no warrant for the position, taken up by the Company that the Government are not entitled to acquire the properties of commercial undertakings under the Defence of India Act.

The only point which has got to be explained is with regard to the scope and nature of the provisions in Rules 75A and 81, of the Defence of India Rules. The above said Rules may be explained in the following manner- Rule 75 A is the -- substantial and governing section in part 12 of the Rules,

which would generally apply to all matters coming under part 12. Rule 75 A deals generally with all properties moveable or immoveable of any nature whatsoever. The subsequent rules in Part 12 refer to different specific sets of properties movebale and immoveable. There may be cases in which a company, may be the owner of a factory, from which the company may get only wages or hire. There may be cases in which the company may also keep its own stock of goods for the operation of the factory. There may be also cases, in which a company may do business, without owning immoveable properties. In such cases it may be sufficient, if the Government were simply to direct ~~the~~ The ~~their~~ managing agents ~~of~~ the company to regulate the manner in which the business has to be done, without in any way affecting the properties owned by the company. In other cases it would be necessary to acquire the propertie also. Rule 81 would apply to the former group of cases, whilst Rule 75 A would apply to the latter group of cases.

The company is therefore not on sure ground, when it contends that the Government were not entitled to acquire the properties of the Company.

The second contention raised by the company is that it is entitled to claim damages at the rate of Rs. 3,000/- per year. In the course of the enquiry in C. C. No. 2 of 1944, the cross-examination of the witnesses of the company disclosed that the company has lost whatever 'Good-will' that it had, that it was incurring loss, year after year, and that it was a God-send, that the Government came to the rescue of the company by - acquiring the properties. The company therefore thought it wise, not to claim any large sum, for loss of profits.

Meanwhile, the company adopted a dubious method of delaying

the proceedings in C.C.No.2 of 1944, and in making frantic appeals to the Government of India to allow a concession to the company, by making a generous payment to the Company over and above the contract rate, inorder to make up the losses of the company. As the Government of India did not want, that the company should suffer loss, in respect of a contract - entered into, for supply of an essential material required for war purposes, offered to pay a sum of Rs. 85120-15-8 to the company, to make up the deficiency between the contract rate and the ~~probable~~ production price. On receipt of the orders from the Government of India for payment of the above said sum to the company, the company filed a petition in C.C. No. 2 of 1944, claiming an additional sum of Rs. 3,41,120-0-0 cacl culated at 20 times the estimated profit of Rs. 34112-0, per year, towards compensation in C.C.No. 2 Of 1944.

19. The company arrived at ~~the~~ a profit of Rs 34112/- per year by including the above said sum of Rs. 85120-15-8, paid by the Government by way of grace to the company. As the company ceased to function after 16-3-43, it is not open to the company to include the said sum of Rs. 85120-15-8 as profits.

20. ~~It~~ is on that basis, that the company is claiming at the rate of Rs. 3,000/- per month from 16- 3- 1943 onwards, in this suit.

21. As it has been shown already, ~~of~~ the company was on the brink or liquidation in 1942- 1943, and it could not have made - profits, if the Government had not acquired the properties of the Company. It would therefore be impossible for the company, in view of the previous history of the Silk factory ~~Filature~~ at Kollegal, and the history of this company in particular, to prove that it is entitled to claim any - damages from the Government.

III. Maintainability of the suit.

22. The following points arise for consideration under this heading:-

(a) Whether the orders of requisition and acquisition are -- illegal and ultravires,

(b) Whether the company is entitled to file a suit in the Civil Court,

(c) Whether the company is legally entitled to claim damages against the Government,

(d) Whether the suit is in time,

(e) Whether the company has complied with the provisions ur Sec. 80 C. P. C.

23 (a) Whether the orders are illegal

The company contends that the Government has not been empowere by the Defence of India Act to acquire an undertaking like that of the plaintiff company. It has been already discussed under another heading, that the Government are entitled - under the Defence of India Act, to acquire the properties of a company. Even if the company is able to prove that the Government should have taken steps under Sec. 299 of the Government of India Act and Sec. 19 of the Defence of India Act, and that a correct procedure has not been -- adopted, it would only amount to an irregularity. It would not amount to an illegality. It is therefore not correct to contend that the orders of requisition and acquisition are illegal and ultravires.

paras 10-16 at pp 18-20 above

1 (b) Jurisdiction of Civil Courts

Section 14 of the Defence of India Act provides that the ordinary Civil Courts would continue to exercise jurisdiction

save as otherwise expressly provided by the Act. Sec.16 provides that no order made in exercise of any power conferred under the Act, shall be called in question in any Court. As it has been already shown, the Government passed the abovesaid orders, only in exercise of the powers conferred under the Act. Once it is proved, that the particular orders were passed in exercise of the powers conferred under the Act, it is not open to any firm or company to agitate the correctness of the order in a Civil Court. The company is therefore not entitled to file the suit in O.S.No.285 of 1944, questioning the validity of the orders of requisition and acquisition in the Civil Court.

25. (c) Claim for damages.

Under Sec. 17 of the Defence of India Act, it is provided that no suit shall lie against the Government for any damages caused by anything done in good faith, in pursuance of the Act or rules framed thereunder. Two conditions are necessary under this provision, i. e. that the ~~Act~~ act should have been done in good faith and that it should have been done in pursuance of the Act. It will be absolutely impossible for the company to prove, that the Government did not pass the orders in good faith. It can be conclusively proved that the Government passed orders, with a view to secure a sufficient quantity of good silk for parachute fabric which is an essential product for prosecution of the War. It has been already shown that the orders were passed in pursuance of the Act and Rules. The Company is therefore not entitled to file a suit for damages against the Government

26 (d) Limitation

Under Article 14 of the Limitation Act, it is provided that a suit to set aside an act of order of an officer of a Government in his official capacity, not otherwise expressly provided in the Limitation Act, should be filed within

one year from the date or order of the act. The orders were passed on 12- 3- 1943 and 30- 3- 1943. The properties were taken possession of, on 16- 3- 1943. The suit to set aside the above said ~~acts~~ orders & acts should have been filed within -- 12- 3- 1944, 16-3-1944 and 30- 3- 1944.

27) As two months provided under Sec. 80 C. P. C. have to be included in the calculation of 1 year, the company would get an extended period of limitation until 12- 5- 1944, 16-5-1944 and 30- 5-1944.

28) As the suit has not been filed within the above said dates the suit is barred by limitation.

(29) The decisions under Art. 14 make a distinction between voidable or irregular acts and orders, and void or illegal acts and orders. Art. 14 applies to the former group of cases, and while Art. 120 which gives a period of six years, applies to the second set of cases.

(30) As the above said orders were passed in pursuance of the and rules, Art. 14 applies to the present case; the suit - filed by the plaintiff is, therefore barred by limitation.

(31) (e) Sec. 80 C.P.C.

It may be verified if 2 months ~~has~~ have elapsed from the date of service of notice on the Government, ~~and~~ before 1-12-44, the date of the plaint in O.S.No. 285 of 1944. If 2 months have expired, no objection can be raised under Sec. 80 C. P. C. Otherwise, an additional para has to be inserted in the written statement, that the provisions under Sec. 80 C. P. C. have not been complied with.

(32) (1) V. Summary.

(1) The Government are entitled to acquire the moveable and immoveable properties of a commercial and industrial undertaking under Sec. 19 of the Defendant of India Act, (read with Sec. 299 of the Government Of India Act) and Rule 75 A of the Defence of India Rules.

(2). The orders of requisition and acquisition are legal and intravires.

(3) The plaintiff is not entitled to file a suit for a declaration that the above said orders are not binding upon it, as the above said orders were passed, in pursuance of the provisions, in the Defence of India Act and Rules passed thereunder, and as the above said orders were passed in good faith

(4) The plaintiff is not entitled to claim damages from the Government for the alleged loss of profits, as the properties were acquired in good faith and in pursuance of the Defence of India Act and Rules.

(5) The plaintiff is not entitled, on merits, to claim any amount as damages, for alleged loss of profits.

(6) The suit is barred by limitation under Art. 14 of the Limitation Act, as it has been filed more than 1 year after 12- 3- 1943, 16- 3- 1943 and 30- 3- 1943.

K. Thandavam
Govt Pleader

Rec 24/3/45 5.30 p.m.

Express Telegram No 11903D/45 dd 24.3.45

Telegram sent 24/3/45

Government Pleader

Coimbatore

p 13 cf

Your letter twenty first march forwarding draft written statement in Kollegal Silk Filatures Limited acquisition case O S No 1 of 1945 District Court Stop Instructions for revising draft written statement follow by post Stop Please take an adjournment of suit from twenty ninth march to another convenient da

Vide No p 134 cf

Dewment

24/3/45

PC & P.P

PC & D.M. Coimbatore

PC to District Judge

24/3

Pl. issue by Registered Post (acknowledgement due)

Confidential Memo No. 11903 Dis 45-7 d 26.3.45

Sub: Suit – Kollegal Silk Weavers Ltd – Suit filed against Govt of Madras – O.S. No 1 of 1945 of District Court, Coimbatore – Written Statement for defence.

Ref: (i) From the Govt Pleader, Coimbatore, Letter dt 21.3.45

(ii) Telegram dated 24.3.45 from Govt to the Govt Pleader, Coimbatore.

The attention of the Govt Pleader is invited to paragraphs 8 to 12 and 16 of the plaint filed by the Plaintiff Company which contains their main contentions in the case and the remedy they seek. The written statement to be filed on behalf of the Govt should categorically controvert the allegations made in the plaint and the remedies claimed against them, unless of course any of them is proposed to be admitted. In the present case, none of the allegations referred to in the plaint is admitted by the Government. The written statement should therefore bring out clearly and specifically the following points:-

(i) the going concern as such was not requisitioned in the case;

(ii) Certain specified movable and

immovable properties belonging to the Plaintiff were requisitioned under Rule 75-A of the Defence of India Rules as in the opinion of the Provincial Govt it was necessary to do so for the efficient prosecution of the war. Rule 75-A of the Defence of India Rules clearly empowers the Govt to requisition any property, movable or immovable, if in their opinion it is necessary so to do for the purpose aforesaid;

(iii) Under Rule 75-A(2) it is open to the Provincial Govt at any time to acquire any property which has been requisitioned under Rule 75-A(1) and it is not open to the Plaintiff to claim a return of the property so acquired either before or after the cessation of hostilities;

(iv) Under rule 75-A(4) Compensation for any movable property requisitioned and acquired has to be fixed by the Provincial Govt; and Compensation in respect of an immovable property requisitioned and acquired has to be fixed (if the parties do not agree to the amount) by an Arbitrator appointed by the Government under Section 19(1) of the Defence of India Act.

Legal notes at pp 4-5 orig

the compensation in this case was fixed in accordance with the aforesaid provisions;

(v) the compensation in respect of movable properties fixed under Rules 75-A of the Defence of India Rules is final and cannot be challenged in any Court of Law. The compensation in respect of immovable properties under Section 19(1) of the Defence of India Act cannot also be called in question by suit;

(vi) The Plaintiff is not entitled to any damages and the damages claimed are excessive;

(vii) The fact that it was open to the Government to exercise power of supervision and control over an industrial undertaking under Rule 81 of the Defence of India Rules does not preclude them from exercising their powers under Rule 75-A to requisition any movable or immovable property, if in their opinion it was necessary or expedient so to do;

(viii) Section 16 of the Defence of India Act bars the present suit. By virtue of that Section, no order made in exercise of any powers conferred by the Act or the Rules made thereunder can be called in question in any Court. The suit is therefore

(ix) The Plaintiff is not entitled to any relief in the Suit and that the Govt should be awarded their costs in the Suit.

2. Paragraphs 3, 4, 10 and 11 of the draft written statement forwarded with the letter cited are not necessitated by any thing contained in the Plaint and should therefore be omitted. It is not necessary to refer to the fact that the concern was working at a loss as a justification for the requisition and acquisition as the case for the Govt is that they did not requisition the going concern at all, but requisitioned only certain specific property, movable and immovable. Any thing in the written statement which has the effect of weakening this probis will prejudice the Government's case.

3. A copy of a note on the legal aspect of the requisition and acquisition of the Specific properties of the Plaintiff Company is enclosed for reference and for use in arguing the case and in preparing the written statement.

4 The Govt Pleader is requested to prepare a revised draft written statem

incorporating the above points clearly among
others, Through and to submit very urgently the revised dr
one to be left in Court Pleas Office signed by Secy & one for file in the Office.
in duplicate, for approval of the Govt.

Cost
25-3-45

2634/5

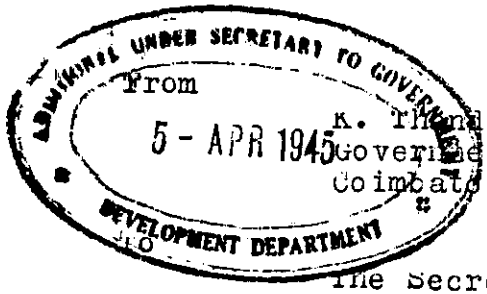
To The Govt Pleader

Coimbatore (with cash) Sd/- K.S.C by
Special Post
Acknowledgement

Copy of Ms 11-13 ref
Copy of Ms 31-37 ref of Letter below.

21542D/45

Coimbatore, 2nd April 194



From

K. Thandavam Chettiar, B.A.B.L.,
Government Pleader,
Coimbatore.

The Secretary,
Development Department,
Govt. of Madras, M a d r a s.

Your Ref. No.11903 D/45-3.
Sub: O.S. No.285 of 44, Sub Court, Coimbatore - Suit by Kollegal Silk Filatures Ltd., against the Government - Suit withdrawn to the file of the District Court, Coimbatore.

S i r,

1 The suit filed by Kollegal Silk Filatures Ltd., was taken up by the District Court on 29-3-45 The District Court has adjourned the suit to 12-4-45 for filing the written statement.

2 I have since received the necessary particulars to prepare the revised draft written statement. I shall be sending the revised draft written statement in the course of this week.

3 If it is not possible to file the written statement on 12-4-45, I shall take further time for filing the written statement in court.

K Thandavam
Govt Pleader

Copy to the Director of Industries & Commerce,
Madras.

29/9/44 Memo no. 11903 D/45-8 d 9.4.45

Sub: Suit - Kollegal Silk Filatures Ltd. - Suit filed against Govt. of Madras - O.S. no. 1 of 1945 of Dt. Court, Coimbatore - Written Statement for Defence

9.4.45 Ref: From the Govt. Pleadr, Coimbatore, letter no. nil d 2.4.45

The Govt. Pleadr, Coimbatore is requested to expedite the submission of the revised draft statement promised in the letter cited.

DPE 9/4/45

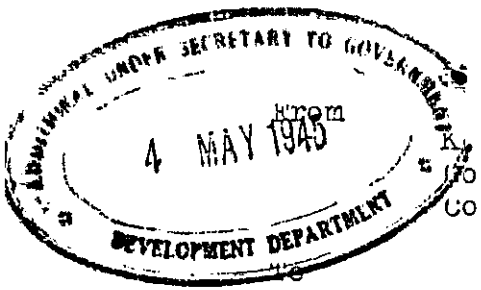
To Govt. Pleadr, Coimbatore

~~(through the Collr. of Dt. Magistrate Coimbatore)~~

Copy to DFO. Coimbatore

R 16.4.45

MADRAS
11 APR 45



Coimbatore, 1st May, 1945.

From

K. Thanavan Chettiar, B.A.B.L.
Govt. Pleader,
Coimbatore.

The Secretary,
Development Dept.,
Govt. of Madras, M a d r a s.

pp 25-33 ff

Your Ref.- Memo.No.11903/D45-1 Kollegal Filatures

I am enclosing herewith a draft amended written statement to be filed on behalf of the Govt. in the suit filed by the Kollegal Silk Filatures against the Govt.

The points mentioned in your memorandum No.11903-D/45-7 dated 26-3-1945 have been brought out in the amended draft.

The number of the above said suit is O.S. No.285 of 1944 in the Sub Court, Coimbatore. The correct number of the said suit in the District Court is O.S. No.2 of 1945. Hence in the present amended draft written statement the number of the suit is given as O.S. No. 2 of 1945. The No. given in the previous communications as O.S. No. 1 ~~No. 1~~ is not correct.

Encl:

K. Thanavan
Govt. Pleader.

In the Court of the District Judge of Coimbatore.

O. S. No. 2 of 1945.

Kollegal Silk Filatures Ltd.) Plaintiff.

The Province of Madras represented by the Secretary to Govt. Development Dept.) Defendant.

Written statement of the Defendant under Order VIII rule 1 C.P.C.

1. The plaint is not correct and is not maintainable in law.
2. The allegations in the plaint are not admitted by the defendant. The plaintiff is put to strict proof of all the allegations in the plaint.
3. The allegations in para 3 of the plaint are not correct. The plaintiff is a Limited Company, registered under the Indian Companies Act. The plaintiff owned moveable and properties, including plants and machinery, as well as immoveable properties, in the shape of lands and buildings. As the Government of India was in urgent need of good silk, for parachute fabric, for purposes, in connection with the efficient prosecution of the war, the defendant passed orders on 12-3-43, for requisition of two specific sets of moveable and immoveable properties, belonging to the plaintiff, under rule 75 A of the Defence of India Rules. The description of the moveable and immoveable properties, requisitioned by the Government under Sec 75 A of the Defence of India rules, was given ~~in two~~ separately ~~schedules, in~~ in the Schedule to the order of requisition. The allegation in para 5 of the plaint, that under the schedule to the above said order of requisition, 150 reeling basins, steam-engine, boilers, engines, pumps, etc. were described as immoveable properties, is not correct. On the other hand, the above said items were included under the heading of moveable properties in the schedule to the above

The allegation in para 6 of the plaint, that the defendant took possession of the plaintiff's business, inclusive of all moveable and moveable properties on 16-3-43, is not correct. The defendant took possession, only of certain specific moveable and immoveable properties, belonging to the plaintiff, on 16-3-43. The defendant did not take possessi of the plaintiff's business on 16-3-43, or at any subsequen date.

Subsequently, on 30-3-43, the defendant pased orders for acquisition of the properties already requisitioned. under rule Cl. 2 of the Defence of India Rules.

The allegation in para 7 of the plaint, that the plaintiff protested against the order of acquisition as illegal, is n correct. On the other hand, the plaintiff was claiming a large amount, as compensation to be paid by the Government to the company, for the items of properties acquired by the ~~company~~, under rule 75 A Cl. 2.

The allegations, in paras 8 to 11 of the plaint, that the plaintiff's business was requisitioned and acquired by the Government are not correct. The Government did not requisition or acquire the plaintiff's business at any time. On the other hand, the Government requisitioned and acquired certain specific items of moveable and immoveable properties, belonging to the plaintiff.

The further allegations, in para 8 to 11 of the plaint, that the above said items of properties are integral and inseparabl parts of an industrial undertaking, ~~and that~~ that the said items form an industrial undertaking, ~~and~~ that, as such, they fall under rule 81 of the Defence of India rules, that they do not fall under rule 75 A are not correct. Rule 81 does not apply to the requisition or acquisition, of the plaint properties. The Government did not requisition or acquire any industrial undertaking, as pleaded by the plaintiff. The Government requisitioned and

and acquired only certain specific items of properties belonging to the company. The Government took steps under the provisions ~~under~~ of rule 75 A (1) and ~~under~~ Rule 75 A (2), and did not act, or purport to act, under rule 81.

The question, as to whether the Government are entitled to requisition or acquire an industrial undertaking under the ordinary law or under the Defence of India Act, has no bearing to the present case, since the Government did not requisition or acquire any industrial undertaking of the plaintiff.

The allegations in paras 9 to 11 of the plaint, that the plaint properties form ~~an~~ integral ~~and~~ or inseparable parts of an industrial undertaking is not admitted by the Defendant. Even if the plaintiff proves that the plaint properties form integral or inseparable parts of an industrial undertaking, it does not affect the ights of the Government to requisition and acquire the plaint properties, as properties belonging to the plaintiff, under rule 75 A of the Defence of India Rules.

The allegations in para 11 of the plaint are not relevant to the present case, since the Government did not act, or purport to act, under rule 81 of the Defence of India Rules.

The allegations in para 12 of the plaint are neither correct nor warranted. The plaintiff is not entitled to claim any amount as damages from the Government, as the acquisition of the plaint properties was made by the Government, in good faith, and in pursuance of the powers, conferred on the Government und the Defence of India Act and Rules framed thereunder. The allegation that the plaintiff has suffered loss by the acquisition of the plaintiff's properties by the Government is not correct. The amount of loss estimated by the plaintiff is grossly exaggerated. The plaintiff is not entitled to claim Rs. 61,500/- or any portion of the said sum, from the Government.

The allegations in paragraph 13 of the plaint are not correct. The Government are entitled to requisition and acquire the properties of the company, under the Defence of India A

and they have taken possession of the said properties, under the provisions of the Act. The plaintiff is not entitled to claim possession of the plaint properties, either now, or after the cessation of the hostilities, or six months thereafter, from the defendant.

The allegations in para ~~13~~ 14 of the plaint are not correct. There is no case of action for this suit.

The allegations in para 15 of the plaint ~~is~~ are not correct. The suit has not been properly valued, for purposes of jurisdiction and court fees.

The plaintiff is not entitled to file this suit in the Civil court. He is debarred from questioning the necessity for passing the orders of requisition and acquisition, or the correctness or validity thereof, in a Civil court, under Sec. 16 of the Defence of India Act. The plaintiff is therefore entitled to invoke the jurisdiction of this court, to question the validity or correctness of the above-said orders.

18. The suit as framed is not maintainable in law. The orders passed by the Government were ~~made~~ passed in good faith, and in pursuance of the Act and the Rules thereunder.

19. It is not correct to state that the abovesaid orders and acts of the Government are illegal or ultra vires. The above said orders and acts of the Government were ~~made~~ passed, and done, in good faith, and in pursuance of the powers vested in the Government under the statutes.

As the plaintiff has not filed the suit within a one year from 12-3-43, 16-3-43, and 30-3-43 the suit is barred by limitation.

21. The plaintiff is not entitled to any relief in this suit.

22. The suit is therefore liable to be dismissed with costs.

Counsel for defendant. Defendant.

In the Court of the District Judge of Coimbatore.

O.S.No. 2 of 1 9 4 5

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Kollegal Silk Filatures Ltd. | Plaintiff.

The Province of Madras represented by the Secretary to Govt. Development Department. | Defendant.

Written Statement of the Defendant under Order VIII rule 1 C.P.C.

1. The plaint is not correct and is not maintainable in law.
2. The allegations in the plaint are not admitted by the defendant. The plaintiff is put to strict proof of all the allegations in the plaint.
3. The allegations in para 3 of the plaint are not correct. The plaintiff is a limited company, registered under the Indian Companies Act. The plaintiff owned moveable properties, including plants and machinery, as well as immoveable properties, in the shape of lands and buildings.
4. Certain specified moveable and immovable properties belonging to the plaintiff's company were requisitioned under rule 75A of the Defence of India Rules as in the opinion of the Provincial Government it was necessary to do so for the efficient prosecution of the war. The description of the moveable and immoveable properties, requisitioned by the Government, under Section 75A of the Defence of India Rules, was given separately in the Schedule to the order of requisition. The allegation in para 5 of the plaint, that under the schedule to the above said order of requisition, 150 reeling basins, steam-engine, boilers, engines, pumps, etc. were described as immoveable properties, is not correct. On the other hand, the above said items were included under the heading of moveable properties in the schedule to the above said order of requisition.

5. The allegation in para 6 of the plaint, that the defendant took possession of the plaintiff's business, inclusive of all immoveable and moveable properties on 16.3.43, is not correct. The defendant took possession, only of certain specific moveable and immoveable properties, belonging to the plaintiff, on 16.3.43. The defendant did not take possession of the plaintiff's business on 16.3.43, or at any subsequent date.

6. Subsequently, on 30-3-43, the defendant passed orders for acquisition of the properties already requisitioned, under clause 2 of rule 75A of the Defence of India Rules.

7. The allegation in para 7 of the plaint, that the plaintiff protested against the order of acquisition as illegal, is not correct. On the other hand, the plaintiff was claiming a large amount, as compensation to be paid by the Government to the company, for the items of properties acquired by the Government under clause 2 of rule 75A.

8. The allegations, in paras 6 and 8 to 11 of the plaint, that the plaintiff's business was requisitioned and acquired by the Government are not correct. The Government did not requisition or acquire the plaintiff's business at any time. On the other hand, the Government requisitioned and acquired certain specific items of moveable and immoveable properties, belonging to the plaintiff.

9. The further allegations, in paras 8 to 11 of the plaint, that the above said items of properties are integral and inseparable parts of an industrial undertaking, that the said items form an industrial undertaking, that, as such, they fall under rule 81 of the Defence of India Rules and that they do not fall under rule 75A are not correct. The Government did not requisition or acquire any industrial undertaking as pleaded by the plaintiff. The Government requisitioned and acquired only certain specified items of properties belonging to the company under rule 75A (1) and rule 75A (2) of the Defence of India Rules. The fact that it was open to the Government to exercise the power of supervision and control

control over an industrial concern under rule 81 of the Defence of India Rules did not preclude them from exercising their powers under rule 75A to requisition and acquire any moveable or immovable property if in their opinion it was necessary or expedient so to do.

10. The question, as to whether the Government are entitled to requisition or acquire an industrial undertaking under the ordinary law or under the Defence of India Act, has no bearing to the present case, since the Government did not requisition or acquire any industrial undertaking of plaintiff.

11. The allegations in paras 9 to 11 of the plaint, that the plaint properties form integral or inseparable parts of an industrial undertaking is not admitted by the Defendant. Even if the plaintiff proves that the plaint properties form integral or inseparable parts of an industrial undertaking, it does not affect the rights of the Government to requisition and acquire the plaint properties, as properties belonging to the plaintiff, under rule 75A of the Defence of India Rules.

12. Under rule 75 A(4) compensation for any moveable property requisitioned and acquired has to be fixed by the Provincial Government; and compensation in respect of immovable property requisitioned and acquired has to be fixed (if the parties do not agree as to the amount) by an arbitrator appointed by the Government under section 19 (1) of the Defence of India Act. The compensation in this case was fixed in accordance with the aforesaid provisions. The compensation in respect of movable properties fixed under rule 75A (4) of the Defence of India Rules is final and cannot be challenged in any court of law. The compensation in respect of immovable properties under section 19(1) of the Defence of India Act cannot also be called in question by suit.

13. The allegations in para 12 of the plaint are neither correct nor warranted. The plaintiff is not entitled to claim any amount as damages from the Government, as the acquisition of the plaint properties was made by the Govern-

Government, in good faith, and in pursuance of the powers, conferred on the Government under the Defence of India Act and Rules framed thereunder. The allegation that the plaintiff has suffered loss by the acquisition of the plaintiff's properties by the Government is not correct. The amount of loss estimated by the plaintiff is grossly exaggerated. The plaintiff is not entitled to claim Rs.61,500/- or any portion of the said sum, from the Government.

14. The allegations in paragraph 13 of the plaint are not correct. The Government are entitled to requisition and acquire the properties of the company, under the Defence of India Act and they have taken possession of the said properties under the provisions of the Act. The plaintiff is not entitled to claim possession of the plaint properties, either now, or after the cessation of the hostilities, or six months thereafter from the defendant.

15. The allegations in para 14 of the plaint are not correct. There is no cause of action for this suit.

16. The allegations in para 15 of the plaint are not correct. The suit has not been properly valued, for purposes of jurisdiction and court fees.

17. The plaintiff is not entitled to file this suit in the Civil court. He is debarred from questioning the necessity for passing the orders of requisition and acquisition, or the correctness or validity thereof, in a Civil Court, under Sec. 16 of the Defence of India Act. The plaintiff is therefore not entitled to invoke the jurisdiction of this court, to question the validity or correctness of the above-said orders.

18. The suit as framed is not maintainable in law. The orders passed by the Government were passed in good faith, and in pursuance of the Act and the Rules thereunder.

19. It is not correct to state that the abovesaid orders and acts of the Government are illegal or ultra vires. The above said orders and acts of the Government were passed, and done, in good faith, and in pursuance of the powers vested in the Government under the statutes.

20. The suit is barred by limitation.

21. The plaintiff is not entitled to any relief in this suit.

22. The suit is therefore liable to be dismissed with costs.

Counsel for defendant.

Defendant.

Pl. issue by Regd. post
& the Govt. Pleader
Coimbatore (A.D)

Memo no 11903 D/45-12 21.5.45 Dev Dept.

21/5/45

Subject: Said - Kollegal Silk Filatures
H.D - O.S. no 2 of 1945 of Dt. Court,
Coimbatore - Written Statement

Ref. C.F. Ref. from the Govt Pleader, Coimbatore
Letter no nil dated 1-5-45

H.C.3-6 C.F. The draft written statement submitted by the Govt Pleader, Coimbatore with his letter read above is approved as amended and is appended to this order for being filed in the Court. The Govt Pleader is requested to

inform the Secretary of State to which the case has been adjourned for hearing

Sgd
16.5.45

Sgd 17/5/45

call for enclosures at time of despatch

To the Lord Provost
Edinburgh
Communicate with circular

Copy to the Secretary of State with enclosure

Date 16.5.45
R 7.6.45

Memo. no. 11903 D/45-13 d 8.6.45

Sub: Suit- Kollegal Silk Filaturs Ltd. - O.S. no 12 of 1945 of Dt. Court, Coimbatore- Date of next hearing.

Ref: Govt. memo no. 11903 D/45-12 d 21.5.45

The Govt. Pleader, Coimbatore is requested to ~~expedite his reply to the memo cited~~. the Court of the date to which the case has been adjourned for hearing

To The Govt. Pleader
Coimbatore
~~to the D.D.C.~~

C11903D/45

37344D/45

Coimbatore, 17th June 1945.

UNDER SECRETARY
21 JUN 1945
DEVELOPMENT DEPARTMENT

From

K. Thandavam Chettiar, B.A., B.L.,
Government Pleader,
Coimbatore.

To

The Secretary to the Government,
Development Department,
Government of Madras. M a d r a s.

S i r,

Your Ref. No. Memorandum No. 11903 - D/45 -13.

Sub: suit - Kollegal Silk Filatures Ltd., O.S. No.2 of 1945 - Dist. Court, Coimbatore.

The suit is posted to 19-6-45 for filing the written statement of the Government in court. The suit will be adjourned on 19-6-45, to a later date for the trial ~~trail~~ of the suit. I shall write to you again, after 19-6-45.

K. Thandavam
Govt Pleader

Dev. Dept

To U.S.

The Govt. Pleader, Coimbatore may be reminded ~~if necessary~~ on 30.6.45, ~~if necessary~~ for a report on the progress of the case.

21/6/45 21.6.45

Ser by remind.

Pl. issue
Confidential Memo no. 11903 D/45-14 d 2.7.45
2.7.45

Sub: Suit – Kollegal Silk Filatures Ltd. – ~~O.S. no. 2 of 1944~~ ~~District Court, Coimbatore.~~ Compensation for acquisition of properties by Govt.

Ref: From the Govt. Pleader, Coimbatore, letter no. nil d 17.6.45

The Govt. Pleader, Coimbatore is requested to ~~report the progress of the case~~ report the present stage of the case speedily in the Dt. Court, Coimbatore and the Duty cast mentioned above.

Dpd a.s.c.
2.7.45

30/6/45

To The Govt. Pleader, Coimbatore

R 18.7.45

Government of Madras

EDUCATION AND PUBLIC HEALTH DEPARTMENT
(Public Health)

G.O. No. 1635, 21st April 1941

Act—Madras Prevention of Adulteration Act, 1918—Powers of local executive officers under certain provisions—Conferred on health officers under section 16 of the Madras Public Health Act, 1939—Notification issued.

Order—No. 1635, P.H., dated 21st April 1941:

In exercise of the powers conferred by section 16 of the Madras Public Health Act, 1939 (Madras Act III of 1939), His Excellency the Governor of Madras is hereby pleased to direct that the functions and duties of the local executive officers under section 3 of the Madras Prevention of Adulteration Act, 1918, so far as they relate to sections 9, 11, 14, 15, 16 and 18 thereof shall, subject to general control of the Director of Public Health, be performed and discharged—

(i) in the case of a municipality having a Municipal Health Officer by the Municipal Health Officer;

(ii) in the case of a panchayat having a panchayat Health Officer by the Panchayat Health Officer; and

(iii) in the case of a panchayat not having a Panchayat Health Officer, by the District Health Officer of the district within which the panchayat is situated

(By order of His Excellency the Governor)

V. V. SUBRAHMANYAM,
Deputy Secretary to Government.

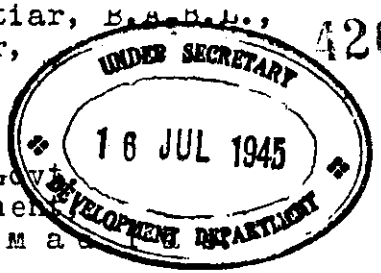
To all Executive Authorities of Municipalities (through the Chairmen of Municipal Councils).
„ all Presidents of District Boards.
„ all Presidents of Panchayat Boards in whose areas the Madras Prevention of Adulteration Act is extended.
„ the Director of Public Health.
„ the Inspector of Municipal Councils and Local Boards.
„ the Local Administration Department.
„ the Legal Department.
„ the Superintendent, Government Press, for publication of notification.
„ the Surgeon-General.

Coimbatore, 11th July 1945.

From

K. Thandavam Chettiar, B.A.B.L.,
Government Pleader,
Coimbatore.

42633 D/45



To

The Secretary to Govt.
Development Department
Govt. of Madras, M a

Your Ref. No. Memorandum No.11903-D/45.
Sub: Suit - Kollegal Silk Filatures Ltd.,
O.S. 2of 1945 - Dt. Court Coimbatore.

S i r,

The written statement of the Government has been filed into court. The plaintiff has taken time to produce all documents on which the plaintiff relies. The suit in O.S. No.2 of 1945 has been adjourned to 23-7-45, for framing issues and for production of documents by the plaintiff, and by the Govt.

The connected files relating to the acquisition of the moveable and immveable properties of Kollegal Silk Filatures Ltd, may be sent to me. Such of the documents which may be useful to support the contentions on behalf of the Government may be taken from the files, and produced into court.

K. Thandavam
Govt Pleader

JUDGE'S BUNGALOW,
COIMBATORE.

~~93356~~ D/45

Dated 16/7/ 1945

My dear Sivasami,

Sub:- Accounting Kollegal Silk Filature and Dyeing and Bleaching Factory - Disputations Compensation - Award promised - Request about it.

While the arbitration was going on between us as Arbitrator and Dyeing and Bleaching Factory from whom the accounts had been made filed a writ petition the legality of the arbitration itself & wanted the arbitration to be clubbed with the writ petition & thereby the arbitration was stopped. The writ petition was finally disposed of by the end of this month. (The writ had been taken out by him for quashing my award). His counsel said that the writ will not be ready for disposal by the end of this month as the G. P. took time for additional written statement. When the writ came up for hearing on 9/7/45 the High Court has informed me that it is not necessary to delay the arbitration and that I should complete the arbitration & hand over charge to my successor. I am expecting relief on 2nd August. ~~I~~ I have applied for leave of a month from 3rd

relief. As Arbitrator in the enquiry
relative to Compensation I held 33 sittings
including 8 sittings at Killeagh. As I could not
find time during working days as a county
Registrar I had to work as
Arbitrator during holidays including last
Summer years & even this Summer. In 1940
we finished the enquiry & delivered the award my
Successor will have to appoint a person as an
Arbitrator & he will have to go over the same
field once again which will mean months
of public time & money. As to my qualifications
as Arbitrator why my name & personal
my Successor cannot act upon the evidence
I have recorded; he has to appoint a person
& he will have to begin the whole enquiry
de novo & appoint Counsel to plead &
tells me that he wants to hear witnesses
about the earnings of this Hill Pasture
& over what period & and counsel
to what it was Summer. As for the
cost of this enquiry & that he is not to

JUDGE'S BUNGALOW,
COIMBATORE,

Dat[illegible] 19

Per in this evidence now of the urgency is 8% to be applied separately. He tells me all his evidence and the sanctity evidence like the Abstract may want proved at the quantum of earnings of the select Jurisdiction may require 3 or 4 witnesses. Perhaps either by letter sir may give that in answering enquiries earnings his ~~employer~~ will have to be taken into consideration. Hence they want to prove this evidence which they may they want to prove as much evidence for this & this his evidence includes accountants & all & the accountants & witness has to be summoned in Calcutta. If both sides are able to prove this evidence by pleadings & proved & heard and Chart will & pw. ~~Chart~~. If the urgency remains unfinished by the time I hand over Charge that can be continued. Case is for me to continue the urgency as Arbitrator & finish it even while urging leave. I am intending to hand my charge over

Curtain for sometime & Cooper
direction to continue this work as
Arbitrator & conduct it during
May or Curtain or leave if the Govr. so directs
appointed as Arbitrator is deemed sufficient
due or leave can not make any objection by
going on with this ongoing work when I am
on leave & I need not be applied afresh.
leave. The other suggestion is to leave
my successor to be appointed as an
Arbitrator for doing this work & he will have
to do it afresh as explained above

I solicit your wishes
as to whether I shld go on with the
ongoing if it goes into my leave or whether
the Govt prefer to appoint a new
Arbitrator to do the thing over again
I may be permitted to state that my going work
as Arbitrator during while on leave will not affect
the leave granted to me & that I will treat the
leave as full enjoyed on fulfilling my duty this work
as Arbitrator. Thank I remain

I solicit your wishes to enable me to frame my leave period.

Copy of D.O. No. Nil dated 16-7-45 from the District Judge, Coimbatore, to the Secretary to the Government, Devvelopment Department.

My dear Sivasankar,

Sub: Acquisition of Kollegal Silk Filatures under the D.O.I. Rules -- Dispute about compensation - my promised report about it.

While the above enquiry was going on before me as Arbitrator under Defence of India Rules the Company, from whom the acquisition has been made filed a suit questioning the legality of the acquisiton itself and wanted this enquiry to be clubbed with the suit for joint disposal and therefore the enquiry was ordered to lie over. I was expecting to finish the suit and the enquiry by the end of this month. (The suit had been taken over to my file for joint disposal.) It is now found that the suit will not be ready for disposal by the end of this month as the Govt Pleader took time for additional written statement when the suit came up for hearing on 3-7-1945. The High Court has infomed me that it is not necessary to delay the enquiry about compensation on acct. of the suit and that I should complete the enquiry before I hand over charge to my successor. I am expecting relief on 2nd August. I have applied for leave for two months from date of relief. As Arbitrator in the Enquiry relating to compensation I held 33 sittings including 8 sittings at Kollegal. As I could not find time during working days on account of heavy Sessions and civil work I had to work as Arbitrator during holidays including last Summer recess and ~~xxxxx~~ even this summer. If I do not finish this enquiry and deliver the award my successor will

have to be appointed afresh as an Arbitrator and he will have to go over the same thing once again which would mean waste of public time and money. As my appointment as Arbitrator was by my name and personal my successor cannot act upon the evidence I have recorded: he has to be appointed afresh and he will have to begin the whole enquiry de novo and afresh. Government Pleader tells me that he would let in evidence about the earnings of this Silk Filature at different periods and asks me to treat it as common evidence for the suit and this enquiry and that he is going to let in this evidence now if the enquiry is going to be completed separately. He tells me that his evidence and the evidence which the opposite side may want to produce on the question of earnings of the Silk Filatures may require three to four sittings. Rulings cited by both sides lay down that in awarding compensation earnings lost will have to be taken into consideration. Hence they want to produce this evidence which they say they wanted to produce as common evidence for this and the suit. This evidence includes account books and several, and account books and witnesses have to be summoned in batches. If both sides are able to produce their evidence and fresh arguments before I hand over charge well and good. If the enquiry remains unfinished by the time I hand over charge there are two courses open. One is for me to continue the enquiry as Arbitrator and finish it even while enjoying leave. I am intending to spend my leave at Coimbatore for some time and I have no objection to continue this work as Arbitrator and complete it during my stay at Coimbatore on leave if the Government so direct. As my appointment as Arbitrator is personal, the fact that I am on leave cannot make any difference for my going with this enquiry even when I am on leave and I need not be appointed afresh. The other course open is to leave my successor to be appointed as an Arbitrator for doing this work and he will have to

do it afresh as explained above.

I solicit favour of instructions as to whether I should go on with this enquiry if it goes into my leave or whether the Government propose to appoint a new Arbitrator to do the thing over again. I may be permitted to state that my doing work as Arbitrator while on leave will not affect the leave granted to me and that I will treat the leave as fully enjoyed in spite of my doing this service work as Arbitrator which I treat as a good diversion during my leave period. I solicit favour of early instructions to enable me to programme my work.

Yours sincerely,

(Sd) C.S. Chowdary.

Dev. Dept I

Memo No 11903 Dev/45-15d 19.7.45

Sub: Suits - Kollegal Silk Riders Ltd - Acquisition of Property by Govt - Arbitration and suit. Defence

Ref From The Govt Pleader, No Nil dated 11.7.45

- During his last visit to Madras in May 1945, the Govt Pleader, Coimbatore was allowed to perse all the records in Secretariat relating to the subject mentioned above. The records, which contain notes and other discussions of a privileged nature, cannot be sent outside the Secretariat except under a Summons from a Court and even then, only if the production of original records is insisted upon under due process of law. The Govt Pleader, Coimbatore is therefore requested to specify the particulars of the

Subject to orders

I.C.S. para 64 & 65 pp 225 & 226 of Manual of Govt Orders

P.O 174 of B.S.O Vol IV

Cross ref to pp 1071-1092 of B.S.O Vol IV

Dorothy
pl. issue
19.7.45

documents which he wishes to have at the
Conduct of the case and as to whether he does
not possess certified copies of them or whether
such copies are not adequate for the purpose of
the proceedings before the Court. He may, if
necessary, peruse them again at the Secretariat
and obtain authenticated copies for
production before the Court.

Sd
19/7/45

19.7.45
Please
Coimbatore.
Copy to the DIGP ✓

R 15.8.45

Please see
Reply dated below

Copy-II
Copies
Pl. wire Secy Edn
Mr 19.7.45

D.O. No. 11903 D/45-16 d 19.7.43

(Secy's Secn)

Sub: War. D.O.I. Rules - Acquisition of property of Scottish Dilawri Hindu College - Arbitration proceedings for disposal of Compensation

I am to invite a reference to G.O. No 2436 Ms. Dev dated 30.9.43 in which Mr C.S. Chaudhuri, Dy. Judge, Calcutta was appointed an Arbitrator in the proceedings cited above and to enclose a Copy of Letter received from him relating thereto. In the circumstances stated by Chaudhuri, the Govt. authorities see no objection to the arbitration proceedings being conducted by him during the period of his leave, provided the Hon'ble Chief Justice would agree to the proposed procedure

pp 47-48 of (C)
Copy was sent to Hon'ble Chief Justice, Calcutta for Govt. Copy

pp 67-69 of

Ind

B on p 68 of

being followed. The proceedings have already been pending for a long time and it would be desirable, if possible, to avoid a 'De novo' enquiry by Choudhuri's successor. I am to request that you may be good enough kindly to obtain the Consent of the Hon'ble Chief Justice for the proposal mentioned above

I am to suggest that the matter be treated as Specially urgent Choudhuri is proceeding on leave from 2.8.45

Yours faithfully,

S. P. Thompson

Registrar, High Court

Despatched in S.C. (with cuts) of Madras (with cuts)

D.O.No.3921/45-B2.

446-D/4

23rd July 1945.

My dear Sivasankar,

War - Defence of India Rules - Acquisition of properties of Kollegal Silk Filatures Ltd.- Arbitration; Refce.-D.O. 11903 D/45-16 Development dated 19-7-45.

The Hon'ble Judges have no objection to Mr. C. Satyanarayana Chowdri functioning as arbitrator i the case relating to the Kollegal Silk Filatures Ltd while on leave.

Yours sincerely,

T. Sivasankar Esq., I.C.S.,
Secretary to Government,
Development Department, Fort St.
George, Madras.

Issue at once 27/7.

27/7/45

D.O. No. 11903 D/45 – 17 d 27.7.45

(Dy Secy Rao Bahadur.)

Sub: Kollegal Silk Weavers Co-operative Arbitration proceedings.

Ref Your D.O. No Nil d. 16.7.45

I am to say that the Govt. ~~of Madras~~ have no objection to the arbitration proceedings relating to the subject mentioned above being conducted by you during the period of your leave, and that the Hon'ble Judges of the High Court have also agreed to this proposal.

(JS

Rao Bahadur
C. S. Chandrasekhara Bhattar
Dist. Judge
Coimbatore

28.7.45

28/7/45

Dispd 27.7.45

p 75 cf

p 67-69 cf

10/11/7

A. issue

Memo No 11903 D/45–19 d 11.9.45

Mr 11/9/45

Sub:– Kollegal Silk Farms Ltd — Acquisition of property by Govt — Compensation - Arbitration proceedings

3 of Rantn Silk Farms

Ref: From the Govt Pleader, Coimbatore letter No Nil dated 3–9–45

Visit

In the letter cited, the Govt Pleader has stated that the suit filed by the Kollegal Silk Farms Ltd against the Govt has been posted to 20–9–1945 for trial. He is requested to state whether the arbitration proceedings in respect of the Compensation paid to the Company have been concluded by the Arbitrator and whether an award has been passed.

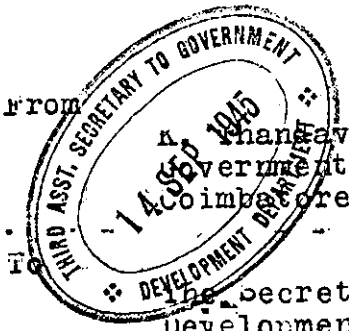
Visit p 77 g

11/9/45

8.9.45

The Govt Pleader,

Coimbatore



Coimbatore, 11th Septr. 1945.

From

K. Thangavam Chettiar, B.A.B.L.,
Government Pleader,
Coimbatore.

To

The Secretary,
Development Department,
Government of Madras, M a d r a s.

Your Ref. No. * Memorandum No.11903 D/45.—d

Sub: Suit - Kollegal Silk Filatures Ltd- O.S. 2of 1945-
District Court, Coimbatore.

The suit in O.S. 2 of 1945 has been adjourned to 21-9-45 for enquiry.

The plaintiff, the Kollegal Silk Filatures Ltd., has taken out notice requiring the Government to produce the following documents into court before the date of hearing. The above said documents may be directed to be sent to me in advance on or before 17-9-45, so that, I may be able to go through them and take notes before putting them into court.

One of the employees in Kollegal Silk Filatures, who would be in a position to speak about some of the relevant facts relating to the factory from 1937 to 1944 may be directed to meet me on or before 17-9-45 in order that I may get the necessary instructions for getting ready with the suit on 21-9-45.

The list of documents the plaintiff has called the Govt. to produce into court is given hereunder

p.t.o.

1. Attendance register or muster role of labour employed in Kollegal silk filature Ltd., from 16-3-43 to 30-6-43.
2. Attendance register or muster roll of the above staff employed from 16-3-43 to 30-8-43.
3. Production book from 15-3-43 to 30-6-43.
4. Copy of reports of the working of the same sent to the Government from the filatures.
5. Salary payment register and salary bills for March April May 1945 of the Kollegal Silk Filatures.

Copy to:

1. The Director of Industries and Commerce, Madras.
2. The Manager, Kollegal Silk Filatures, Ltd., Kollegal.
3. The Sericultural expert, Kollegal.

K. Thandavam
Govt Pleader

Pl. issue at once

14.9.45

Memo no. 11903 B/45-20d 14.9.45

Sub: suit- Kollegal Silk Filatures Ltd - O.S. 2 of 1945 Dt. Court, Coimbatore

Mp 81-82 of Ref: From the Govt. Pleader, Coimbatore, letter d 11.9.45 Cpy endorsed by the D.D & C.

The D.D & C. is requested to send certified copies of the wide A'-p 81 of documents mentioned in the letter cited to the Govt. Pleader, Coimbatore and permit an employee of the Kollegal Silk Filatures to meet the Govt. Pleader, Coimbatore, as desired by him.

81-82 of The attention of the D.D & C is invited to the letter (cited) addressed by the Govt Pleader Coimbatore to the Govt., (a Cpy of which has been endorsed to him) and he is requested to take the necessary steps to furnish the Govt Pleader with the particulars and the documents required by him before appearing for the hearing of the suit on 21.9.45

14/9/45

~~To the D.D & C~~

1 Encl p 81 of

VAr 14.9.45

To the D.D & C ✓

Copy to the Govt Pleader Coimbatore. ✓

Despd KM 14-9-45

Comparative statement showing the consumption of Colombo arrack and coconut toddy arrack in the several districts of the Presidency during the quarter ending 31st December 1938.

Districts and year.		Colombo arrack.				Coconut toddy arrack.			
		In the quarter.		Up to the quarter.		†In the quarter.		†Up to the quarter.	
		Gallons.	Drams.	Gallons.	Drams.	Gallons.	Drams.	Gallons.	Drams.
Vizagapatam ..	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
East Godavari ..	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	.
West Godavari ..	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	
Kistna	1938–1939 ..	..	..	..	..	..	..	..	.
	1937–1938 ..	..	..	..	..	..	..	..	.
Guntur	1938–1939 ..	..	..	..	4	..	..	..	.
	1937–1938 ..	..	..	..	..	..	..	..	.
Nellore	1938–1939 ..	..	..	..	..	..	.	..	..
	1937–1938 ..	..	..	..	..	..	.	..	..
Cuddapah	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	8	..	..	..	..
Anantapur ..	1938–1939 ..	..	..	2	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
Bellary	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
Kurnool	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
Madras	1938–1939 ..	9	16	24	8	1,661	14	3,881	5
	1937–1938 ..	16	8	32	28	1,115	29	3,624	24
Chingleput ..	1938–1939 ..	..	..	..	8	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
Chittoor	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	4	..	16	..	..	..	..
North Arcot ..	1938–1939 ..	4	..	4	40	..	..	..	..
	1937–1938 ..	..	16	* 1	44	..	..	..	.
South Arcot ..	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
Tanjore	1938–1939 ..	..	8	..	16	..	..	..	..
	1937–1938 ..	..	8	..	16	..	..	..	..
Trichinopoly ..	1938–1939 ..	..	6	..	38	..	..	..	..
	1937–1938 ..	..	24	..	40	..	..	..	..
Madura	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	24	..	32	..	..	..	..
Ramnad	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
Tinnevelly ..	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
Coimbatore ..	1938–1939 ..	1	32	2	24	..	..	..	..
	1937–1938 ..	1	..	1	40	..	..	..	..
The Nilgiris ..	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
Salem	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	4	..	..	..	..
South Kanara ..	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	..	..	..	..	..
Malabar	1938–1939 ..	..	..	..	..	..	..	..	..
	1937–1938 ..	..	..	..	24	..	..	..	..
	1938–1939 ..	15	14	34	42	1,661	14	3,881	5
	1937–1938 ..	18	36	* 39	12	1,115	29	3,624	24

Coimbatore, 14th Septr. 1945.

From

K. Ramachandavam Chettiar, B.A.B.L.,
Government Pleader,
Coimbatore.

56499/D/45

To

The Secretary,
Development Department,
Government of Madras, M a d r a s.

Your Ref. No. Memorandum No.11903 -D/45-19.
Sub: Kollegal Silk Filatures Ltd., acquisition of properties by Government - compensation.

S i r,

The arbitration proceedings were re-opened by the arbitrator and arguments were heard and concluded. The arbitrator has reserved orders. As soon as the award is passed, I shall communicate the result thereof.

The suit in O.S. 2 of 1945 filed by the Kollegal Silk Filatures Ltd., will be taken by the District Judge on 21-9-45 (and not on 20-9-45 as mentioned in the first instance)

K. Ramdavam
Govt Pleader

Coimbatore, 16th Septr. 1945.

From

K. Thandavam Chettiar, B.A.B.L.,
Government Pleader,
Coimbatore.

56498 D/45

To

The Secretary,
Development Department,
Govt. of M a d r a s,
M A D R A S.

Your Ref: No. Memorandum No. 11903-D/45 - 19.
Sub: Kollegal Silk Filatures Ltd., acquisition of properties by Government - compensation. O.S.2 of 1945.Dt. Court.------ Coimbatore.

S i r,

The suit in O.S. No. 2 of 1945 is posted for trial to 21-9-45.

As the date of enquiry draws near, the plaintiff is serving notice after notice for production of documents for admission of facts, for answers to interrogatories etc. The plaintiff has also produced some documents into court. The plaintiff may give fresh notice from 17-9-45 to 20-9-45 for production of further documents. The plaintiff may also produce additional documents into court before 21-9-45.

In view of the circumstances mentioned above, it becomes necessary to search for relevant documents in the Government files of papers relating to Kollegal Silk Filatures Ltd., and file them into court, to meet the contentions of the Plaintiff.

Hence it is necessary to have all the ~~necessary~~ relevant Govt. files relating to the above, ~~one day~~ atleast two days before the date o

hearing.

I would therefore request you to send all the files of papers connected with the Kollegal Silk Filatures Ltd., immediately, so that I may have them on 18.9.45 or 19.9.45

K Thandavam
Govt Pleader

Reserve 10/5/1919

19/9/45

Express Telegram No 11903 D/45 – 21 d 19.9.45

To

Government Pleader

Coimbatore.

pp 87-88 cf Your letter Sixteenth September for records relating Kollegal filatures suit Stop Please indicate specifically records required Stop Director Industries being instructed Comply your letter Stop Suggest your hereafter address Director for information documents required

Order of Secy at 12 & 13 ng

Subject to orders

Department

19/9/45

AP 19.9.45

Collector Coimbatore

copy to Dy Sec. Ltr Copy of letter from G.O. Ms is required to furnish with the Report called for

Ack

C.F 32 (a).

INDUSTRIES & COMMERCE

57729 D/45

Registered

From (Name) A. Khaleeli, Esq., I.C.S.

Designation Director of Industries & Commerce,

Station MADRAS

THIRD ASSTT. SECRETARY 21 SEP 1945 DEVELOPMENT DEPARTMENT

To

The Secretary to Government,
Development Department,
MADRAS.

Enclosures:

No. D.1-2160-42, dated 19th September 194

Sir,

Sub:-Industries - Suits - Kollegal Silk Filatures Ltd - Acquisition of properties by Government - Arbitration and suit.

Ref:-Government Memorandum No.11703-D/45-15. Dev. dated 19th July 1945.

M 71-12

1 & 9: below

I submit a copy of letter dated 16th September 1945 which I have received from the Government Pleader, Coimbatore and suggest that such action as is deemed called for may be taken in the matter and a suitable reply sent to him.

M/

1/2

20/9

For Director of Industries & Commerce.

Encl:-On the reverse.

(P.T.O.

Enclosure.

Copy of letter No.Nil, dated 16th September 1945, From Sri K. Thandavam Chettiar, B.A.B.L., Government Pleader, Coimbatore, to the Director of Industries & Commerce, Madras

Sub:-O.S. No.2 of 1945 - Dt. Court Coimbatore.

The suit is posted for trial on 21-9-45. As the date of enquiry draws near, the plaintiff would serve notice after notice for production of documents, for admission of facts, and for answering interrogatories. It may not be possible to write to the Government and get the required documents in time, before 21-9-45, in case the plaintiff gives notice to me on 18-9-45 or 19-9-45.

It therefore becomes essential, that all the files with the Government, relating to Kollegal Silk Filatures Ltd., may be obtained and sent to me immediately. If the plaintiff produces documents, which may be favourable to the company, it may become necessary to search for relevant documents in the Government file of papers, and produce them into court, in order to meet the contentions of the plaintiff.

I would therefore request you, to write to the Government, and arrange to send the files of papers relating to the Kollegal Silk Filatures Ltd., to me immediately.

(True Copy)

VR/20-9-45.

Express Telegram no. 11903 D/45-22d 27.9.45

To

Government Pleader
Coimbatore

My telegram 11903 D/45—21 nineteenth Septr regarding Suit Kollegal Zilatus Stop Please inform ~~together upon received~~ notice of ~~document to be produced in Court~~ required has been was received and accordingly taken.

Devment

Coimbatore 30th Septr. 1945.

From

K. Thandavam Chettiar, B.A.B.L.,
Government Pleader,
Coimbatore.

11903-D/45

To

The Secretary
Devekopment Dept.,
Govt. of Madras, M a d r a s.

Ref. No. Memorandum -11903 -D-45.
Sub: Kollegal Silk Filatures Ltd., - suit -
O.S. No. 2 of 45 - Dt. Court, Coim atore.

S i r,

I received the telegram dated 27-9-45 and the letter dated 27--9--45.

The plaintiff, Kollegal Silk Filatures Ltd., filed some documents into court on 20-9-45. Some of the documents, for which notice was given by the Plaintiff, were also produced into court on behalf of the Government 20-9-45.

When the suit was taken up, the plaintiff represented to the court, that the Managing agent has to go through the documents, before letting in oral evidence in the suit. The court has adjourned ~~to more~~ the suit to 25-10-45 for hearing.

The suit will be taken up provisionally on 4-10-45, to await ~~the~~ admission, by the parties, of the documents produced already in court, with a view to dispense ~~with the examining wit-~~ with the examination of witnesses, in respect of the above said admitted documents.

I shall be writing to the Director of Industries and Commerce, for further information in connection with the required documents in the suit.

Yours sincerely,
Geo. Reader

No. D.5-2160/42 Department of Industries and Commerce, Chepauk, Madras. Dated 16th October 1945.

From

A. Khaleeli, Esq., I.C.S.,
The Director of Industries & Commerce, Chepauk, Madras

To

The Secretary to Government
Development Department
MADRAS.

Sir,

Sub:--Industries - Sericulture - Suits - Kollegal Silk Filatures Ltd., Kollegal - Compensation - Award - Suit

Ref:--

C.C.No.2 of 1944 - Kollegal Silk Filatures Ltd., Kollegal:

I invite attention to the award of the Arbitrator in the above suit copy sent direct to Government. I am glad to note that the Arbitrator found for Government on all Counts.

O.S. No.2 of 1945 - District Court, Coimbatore - Kollegal Silk Filatures, Ltd., Plaintiff:

The suit is posted for trail to 25th October 1945. The Government Pleader states that the plaintiff has chosen to examine Mr. K.T. Achayya on the plaintiff's side and that it may be necessary to cross-examine Mr. Achayya. He therefore seeks permission to do so. I have told him that there is not only no objection but that it is his plain duty to do s

Government Pleader has suggested in his letter dated 8-10-45 (Copy enclosed) that a copy of the decision of the Federal Court in the

appeal preferred by the Punjab Government in the matter of acquisition of the Electric Supply Corporation at Lahore, be obtained for reference in connection with the present suit. The Punjab Government may be addressed in the ~~necessary~~, if necessary and a copy of the judgment obtained for the use of the Government Pleader.

For Director of Industries & Commerce.

Encl:-1 letter.
VR/17-10-45.

Copy of letter dated 8th October 1945 from K. Thandavam Chettiar, B.A.,B.L., Government Pleader, Coimbatore, To The Director of Industries and Commerce, Madras.

Sub:-O.S. No.2 of 1945 - District Court, Coimbatore.
Kollegal Silk Filatures Ltd.

The Kollegal Silk Filatures, Ltd., relies upon a decision reported in 1943 Lahore A.I.R. at page 41, which refers to the acquisition of the Electric Supply Corporation at Lahore. Some of the observations in the decision lend colour to the contention of the Company, that a going concern may not be acquired by the Government under Section 75-A of the Defence of India Rules.

But there are certain aspects in that case, which are not found in the case in O.S. No.2 of 1945. From the very beginning, the Government have been careful enough, in using words requisition or acquisition of moveable or immoveable properties of the Company. Hence the company as such has not been acquired by the Government in this case.

It the company wants to rest its case on the ground, that the business of the company was the working of the factory at Kollegal, that the entire machinery and buildings had been taken over by the Government, and that therefore the acquisition of the moveable and immoveable properties of the company should be deemed to be the acquisition of a going concern. The written statement has been filed on the side of the Government, denying the various allegations of the company, in connection with the above said aspect.

The Punjab Government took up the matter in appeal, to the Federal court; and the Federal court remanded the matter to the High

Court. The decision of the Federal court has not been reported in the Lahore series or in any other Law report It appears that the suit was taken up for trial in the Lahore High Court and it was ultimately compromised. If the copy of the decision of the Federal Court in the appeal preferred by the Punjab Government is available, it may be useful for reference in this suit. If it is possible to write to the Punjab Government, requesting the latter to send a copy of the judgment of the Federal court, in the appeal preferred by the Punjab Government, a communicatio may be sent to the Punjab Government to the above effect. If it is found inconvenient to get the copy of the judgme of the Federal court from Punjab Government, we can manage with the decisions of our high court, and with some of the decisions of the other High courts.

/R/17-10-45.

1144

27 issue today

Express telegram no. 11903 D/45 - 23d 23.10.45

Mr 23/10/45 Govt pleader

✓ Combats

Copy at pp 99-100 of your letter eighth october addressed under cover for copy of judgment Federal Court for use in O.S. 2 of 1945 - District Court stop It will take time to furnish copy of judgment required stop If copy essential, take adjournment of case now posted twenty fifth.

Devment

Mr 22/10/45

Your letter eighth october addressed Divcom regarding Copy federal Court decision in Lahore case stop. ~~Sty~~ Action being taken to obtain copy for you stop Shall furnish it on receipt

Devment

W 10/45

C to Govt Pleader 23/10/45

Combatants

Mr to D.S.C. 23/11

DW. Dept

103

Express Telegram No 11903 D/45 d 13.11.41

To

Chief Secy to the Govt of the Punjab
Lahore.

Punjab
Lahore.

A on p 98 C/f — It is understood Punjab Govt filed appeal Federal Court against decision reported 1943 Lahore A.I.R relating Lahore Electric Supply Corporation. Stop. Will be grateful if

B on p 99 C/f — Copy of Federal Court orders on such appeal

M on p 100 C/f — Case be furnished for reference in pending Case here.

Devrment

Copy to Chief Secy, Govt of the Punjab, Lahore.
Copy to Dirs
Copy to Govt Pleader, Criminal

INDIAN POSTS AND TELEGRAPHS DEPARTME

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To

Office Stamp

Word

= = = X N LAHORE 16 STE 31 DEVMENT MADRAS

697- EL YOUR TELEGRAM 11903 D 45 13 TH NOVR STOP

APPEAL PUNJAB GOVT IN FEDERAL COURT AGAINST ORDERS HIGHCOUR

LAHORE RELATING ACQUISITION LAHORE ELECTRIC SUPPLY COMPANY

WAS WITHDRAWAN = SECELEC

N. B.—The name of the Sender, if telegraphed, should be written after but separated from the text

Appeal

No. 754 / Accn-I

Dated the

Dev. Dept

Endt No 11903 Dev/45-26 dt 19.11.45

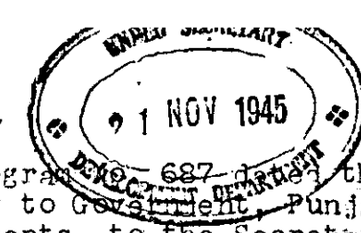
communicated to the Dist Magis

and the Govt Pleader, Coimbatore for

information.

for
18.11.45

To the Dist
Govt Pleader Coimbatore



1203-D/45

Copy of a telegram No. 687 dated the 16th November, 1945 from the Secretary to Government, Punjab, Electricity and Industries Departments, to the Secretary to Government of Madras, Development Department.

.. YOUR TELEGRAM NO. 11703-D/45 ~~OF~~ 13TH NOVEMBER STOP APPEAL PUNJAB GOVERNMENT IN FEDERAL COURT AGAINST ORDERS HIGH COURT LAHORE RELATING ACQUISITION LAHORE ELECTRIC SUPPLY COMPANY WAS WITHDRAWN.

No: 7418-El-45/46201, dated Lahore, the 16th November, 1945.

A copy is forwarded, by post, in confirmation, to the Secretary to Government, of Madras, Development Department.

2. A copy of the agreement made between the Punjab Government and the Lahore Electric Supply Company, Limited is enclosed for reference.

Superintendent Electricity and Printing
for Secretary to Government, Punjab,
Electricity and Industries Departments.

-:KSN:-

This AGREEMENT made this_____day of_____ 1945 between the Governor of the Punjab (hereinafter referred to as the 'Government') of the one part and the Lahore Electric Supply Company Limited being a Company incorporated under the Indian Companies Act, VII of 1913, and having its registered office at Bharat Buildings, Lahore (hereinafter referred to as the 'Company') of the other part.

WHEREAS the Company was granted by the Government by transfer from the original licensee on 28th October 1913, under section 3 of the Indian Electricity Act, 1910, a licence to supply electrical energy in certain areas, comprised in the city and town of Lahore, which licence was amended in 1927, and re-styled "the Lahore Electric Licence, 1912, amended in 1927" (hereinafter referred to as the "Lahore Electric Licence");

AND WHEREAS under section 7 of the aforesaid Act, and in compliance with the conditions of the Lahore Electric Licence, the Government sent notices to the Company on 23rd November 1940, of their intention to purchase the undertaking covered by the Lahore Electric Licence (hereinafter referred to as the "said undertaking");

AND WHEREAS the Government by order, dated 4th November 1942, made under rule 75-A of the Defence of India Rules requisitioned the said undertaking and subsequently acquired it, by further order under the said Rule;

AND WHEREAS upon suit by the Company against the Government contesting the validity of the said notices, on an interim application thereunder, it was held by the Lahore High Court on 14th January 1943 that the said orders under the Defence of India Rules were *ultra vires* and of no effect, from which decision an appeal has been preferred by the Government in the Federal Court, which appeal is still pending;

AND WHEREAS the Government thereafter assumed control of the said undertaking, by order under rule 81 (3), Defence of India Rules, dated the 15th January 1943, and appointed the Chief Engineer, Public Works Department (Electricity Branch) to be the Controller thereof (hereinafter referred to as the 'Controller');

AND WHEREAS the aforesaid suit by the Company was decided by the Lahore High Court on 17th April 1944, the finding being that the said notices, were valid and the election to purchase the said undertaking had been duly exercised by the Government, from which decision, an appeal has been preferred to the Federal Court by the Company which appeal is still pending;

AND WHEREAS the Government and the Company are agreed that, by operation of section 7 of the Indian Electricity Act, 1910, and in accordance with the terms and conditions of the Lahore Electric Licence, the said undertaking shall be purchased by the Government, and that possession of the said undertaking with all plant and property appertaining thereto shall be transferred without delay to the Government by the Company, together with all rights, titles and interest possessed by the Company therein, on the terms and conditions hereinafter appearing:—

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. That upon the execution and registration of this agreement —

(a) the Government shall forthwith withdraw the aforementioned appeal which it has filed against the Company in the Federal Court, and the Company shall likewise forthwith withdraw the aforementioned appeal which it has filed in the Federal Court against the Government. The parties shall bear their own costs in the litigation throughout; and

(*b*) the Company's Chief Engineer shall proceed forthwith to draw up lists of all lands, buildings, works, tools, materials, stores, equipment and plant possessed or occupied by or belonging to the company, and used or intended to be used by the Company for and on account of the said undertaking. In the preparation of such lists, the Company's Chief Engineer shall associate with himself one or more officers of the Government to be nominated by the Controller. All lists shall be prepared in duplicate, and shall be signed upon completion by the Company's Chief Engineer and by the Controller's nominee or nominees who was or were associated in the preparation of each list. The lists will be retained by the Company's Chief Engineer, and one copy of each list shall be delivered by him to each party, when all the lists have been completed. The lists shall be completed, so far as may be, within four months of the registration of this agreement.

2. That upon receipt of copies of the lists as provided in sub-clause (*b*) of clause 1, the Government shall forthwith pay to the Company the sum of rupees one crore, and the Company shall, thereupon, forthwith deliver to the Government possession of all the properties comprised in the said lists. Except as regards the properties of which possession is restored to the Company under clause 3, the Government shall upon receipt of possession, become the full and exclusive owner of the rights, titles and interest possessed by the Company, immediately prior to the delivery in the properties of which possession is delivered as aforesaid.

3. Each party shall be entitled to present to the other, within thirty days of receipt of the copies of the lists, as provided in sub-clause (*b*) of clause 1, a schedule showing in

detail the properties which are claimed by such party to be, or, as the case may be, not to be, properties of the Company, which are being, or have been used or are/or were intended for use for and on account of the said undertaking. In the event of disagreement or dispute in respect of any item or items contained in the said schedules, such disagreement or dispute shall be referred for arbitration to the Electrical Commissioner with the Government of India or his nominee who shall be an official of the Government of India, whose decision shall be final. The Government shall restore possession to the Company of such items of the properties specified in the schedule filed by the Company under this clause as are admitted by the Government to be, or are held by the arbitrator to be properties which the Company used and had been using for purposes unconnected with the business of the Lahore Electric Licence immediately before the delivery of possession under clause 2. The Company shall deliver possession to the Government of such items of the properties specified in the schedule filed by the Government under this clause as are admitted by the Company to be, or are held by the arbitrator to be properties used or intended to be used by the Company, immediately before the delivery of possession under clause 2, for and on account of the said undertaking, and upon receipt of possession of such properties, the Government shall become the full and exclusive owner of the rights, titles and interest possessed by the Company in the said properties.

4(a) That the lands, buildings, works, tools, materials, stores, equipment and plant and all other properties whatsoever of which possession is delivered to the Government and in which the Company's rights, titles and interest pass to and remain with the Government as specified in clauses 2 and 3, shall be valued and the purchase price of the undertaking determined on the following basis, namely :—

(*i*) all such properties whic he Company on the r 1942 shall be valued in accordance w section 7 of the I y Act 1910, and of the Lahore Electric Licence and as if the date of purchase were the 27th November 1942 ; and

(*ii*) all such properties which became properties of the Company after the 27th November 1942 shall be valued at the price paid therefor by the Company, less the loss of value, if any, accruing through depreciation in the period ending on the date of delivery of possession to the Government.

(*b*) That the valuation shall be done by a firm of valuers to be selected by mutual agreement of the parties, and the expenses of valuation shall be shared equally by the parties.

(*c*) The Government acting through the Chief Engineer, Public Works Department, Electricity Branch, shall allow to approved nominees of the Company, access to the premises of the undertaking, at all reasonable times, during the period that the valuation is in progress, and in connection with the proceedings in the valuation.

5. That the parties shall be fully at liberty to accept the valuation report *in toto*, or to vary the valuation by mutual agreement, but if they fail to agree in regard to the whole or any part of the valuation report, then within three months from the last date of delivery of the report to either of the parties each party shall intimate to the other, in writing, the point or points in respect of which it proposes to challenge the report, and within one month of the latest receipt of such intimation by either party the difference or dispute shall be referred to arbitration in the following manner, that is to say, each party shall nominate one arbitrator, and the two arbitrators shall enquire into such difference or dispute ; their conclusions in respect of all points on which they are in agreement, shall be final ; any point or points in respect of which the arbitrators are at variance shall be referred for decision to an Umpire, to be nominated by mutual agreement of the parties within one month of the latest delivery to either party of the report of the arbitrators ; upon the failure of such agreement, or the expiry of the period of one month above referred to, whichever event shall be the earlier, such point or points of dispute shall be referred for decision to a Judge of the Lahore High Court to be nominated by the Chief Justice of the said Court. In case of such further reference, the decision of such Umpire or, as the case may be, of the Judge of the Lahore High Court nominated by the Chief Justice of the said Court shall be final.

6. That when the purchase price has been finally fixed in the manner described above, then—

(*i*) if such price is in excess of rupees one crore, the Government shall forthwith pay such excess amount to the Company with interest thereon at the rate specified in section 4 of the Punjab Electricity Act, 1939, from the date on which possession of the undertaking was handed over to the Government up to the date of such final payment ; provided that, so soon as by agreement of the parties on receiving the valuation report, or by unanimous decision of the arbitrators, a portion of the purchase price shall have been fixed at a sum exceeding rupees one crore, the Government shall forthwith pay such excess amount to the Company, notwithstanding that in respect of the remainder of the purchase price proceedings in arbitration may be either contemplated or pending ; and

(*ii*) if such price is less than rupees one crore, the Company shall repay the difference to the Government with interest thereon at the rate aforesaid, from the date on which the money was received up to the date of such repayment.

7. That the parties shall divide in equal shares the profits (after deduction of income-tax and excess profits tax, if any, leviable thereon) earned by the said undertaking between the 27th November 1942, and the date on which possession of the undertaking is delivered to Government. In ascertaining such profits, the entire cost incurred by the Company in the litigation with Government which rests with the two appeals at present pending in the Federal Court, shall be excluded from the expenditure side of the accounts of the undertaking. The Government shall also be entitled to refund of the expenditure incurred by it in operating the undertaking during the period between the date on which it was requisitioned and the date on which possession was restored to the Company. Such expenditure shall not include the whole or any part of the salary or wages of any officer or servant of the Government, other than officers and servants appointed or employed on the actual working of the undertaking, or charged with duties directly connected with such working. In case of dispute concerning the amount of such profits or expenditure, such dispute shall be referred to arbitration in the manner agreed in clause 5 for the settlement of disputes relating to valuation of the plant and other property of the undertaking.

8. Without prejudice to the provisions contained elsewhere in this agreement, relating to the reference of particular matters to arbitration, and the procedure in such arbitration, all differences or disputes of whatever kind arising out of the transfer of the undertaking to the Government, and relating to matters covered by this agreement, including all such differences or disputes relating to the interpretation of this agreement or any part thereof, shall be referred to two arbitrators, one to be appointed by each party, and the provisions of the Arbitration Act X of 1940 shall apply to the arbitration provided that in any arbitration proceeding under this agreement, the arbitrators or the Umpire, or as the case may be, the Judge of the Lahore High Court appointed in this behalf by the Chief Justice of the said Court shall have power to enlarge the time allowed by law for the making of the award, with the consent of the parties accorded in writing. Further, where in any arbitration under this agreement, the award declares in relation to any particular matter in dispute that a specified sum of money is payable or a specified piece of property is to be delivered, to a party, such party shall have no right to recover in an action at law, in respect of such matter, any money in excess of the sum so awarded or any property other than the property so specified, or where such property cannot for any reason be delivered, of its equivalent in money or other property.

9. The cost of the stamp duty and registration on this instrument shall be of borne by the Government and the Company shall present it for registration, as soon after the execution thereof as may be practicable.

In witness whereof the parties herein before described have hereunto set their hands the day and year first above written.

Signed on behalf of the Government
of the Punjab by

Secretary to Government Punjab
Electricity and Industries Department

in the presence of :—

vitness)

vitness)

in the presence of :—

FROM
SRI. K.Thandavam Chettiar,
Government Pleader, Coimbatore.

TO The Secretary,
Development Department,
Government of Madras, Madras.

1134
72960D/45

No Coimbatore, Dated 21st. Nov. '45.

S i r,

Your Ref: Memorandum No. 11903-D/45.

Sub: O.S.No. 2 of 1945, District Court, Coimbatore
Suit filed by the Kollegal Silk Filature Ltd.

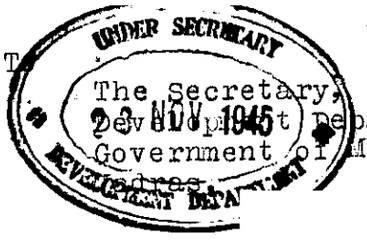
The suit was taken up for trial to-day. Mr. Achayya and Mr. Ganesa Ayyar, were examined as witnesses for the plaintiff, & Mr. Peychaud on the side of the Government. The arguments were also heard in part.

The District Court has adjourned the suit to 23-11-45 for the rest of the arguments. I shall communicate the result as soon as the judgment is pronounced by the Court.

K. Thandavam
Government Pleader.

rom
ri. K. Thandavam Chettiar,
Government Pleader,
Coimbatore.

T



The Secretary,
Development Department,
Government of Madras,
[illegible]

72964D/

No. Coimbatore, dated 22nd Nov.1945.

Your Re.. Memorandum No.11903-D-45.

S i r,

Sub: O.S.No. 2 of 1945, District Court, Coimbatore,
ollegal Silk Filature Limited.

The plaintiff relied upon the decision of the Lahore High Court reported in A.I.R. 1943 Lah. 41, for the position that the building and the machinery form integral parts of a Commercial or industrial undertaking and that under Rule 75-A, a commercial undertaking cannot be acquired by the Government. In view of the fact that there was no decision of Madras High Court on this aspect of the matter, the District Court wanted to know if the matter was taken up by the Punjab Government to the Federal Court, and if any pronouncement was made by the Federal Court on this subject.

From the copy of the communication received by me from the Secretariet, it is found that the Punjab Government preferred an appeal to the Federal Court, that the suit itself was adjusted between the parties outside Court, and that as a result thereof, the Punjab Government withdrew the appeal in the Federal Court. There was therefore no pronou of the Federal Court on this matter.

Subsequent to the filing of the suit by the plaintiff there was a decision of the Calcutta High Cout, reported in 49 C.W.N. 322 - MACKERTICH Vs H.P.GUPTA. In this case, the building of a hotel belonging to the plaintiff was requisitioned by the Government, for the purposes of running a canteen. It was held in that case that the hotel was an undertaking, that the requisitioning of the building belonging to the hotel amounted indirectly to the requisitioning of a commercial undertaking, that Rule 75-A does not authorise the requisitioning of an undertaking and that the requisitioning of the building was ULTRA VIRES of Rule 75-A. This decision was referred to by the plaintiff at the time

It has been pointed out to the Court, that the said decision is a decision of a single Judge and not that of a Bench, that the reasoning given in the dicision does not fit in with the language of Rule 75-A of the Defence of India Rules, under which it is specifically provided that the Government are entitled to requisition ~~the xxx~~ and acquire properties, movable and immovable, and that such properties may be the properties of an individual, or of a partnership, or of a Company, that the Government did not acquire the undertaking in this case, and that certain specific items of movable and immovable properties alone have been acquired, in this Case.

The plaintiff represented that the question ~~xxx~~ whether the Government are entitled to acquire the properties of a commercial undertaking under Rule 75-A, has to be decided finally by the Federal Court, and that the plaintiff was therefore placing the above said two authorities for consideration in this case.

The suit has been posted for further arguments on 23-11-45.

K Thondavan

Government Pleader.

FROM

SRI. K.Thandavam Chettiar,
Government Pleader,
Coimbatore.

TO

The Secretary,
Development Department,
Government of Madras, Madras.

No. Coimbatore, dated, 23rd Nov.'45.

Your Ref: 11903 - D/45

Sir,

Sub: O.SNo. 2 of 1945 - District Court, Coimbatore - Kollegal Silk Filature Limited.

The suit in O.S.No. 2 of 1945 was taken up for trial again to-day.

As the point in issue, as to whether properties belonging to an undertaking can be acquired by the Government under Rule 75-A of the Defence of India Rules, has not yet come up for defision before the Federal Court, the District Court wanted to ascertain, if there are any rulings of ~~other~~ other High Courts on this point. The plaintiff submitted the Full Bench decision in 1943 Lahore 41, and the decision of a single judge in 49 C.W.N. 322.

In the former case, the Full Bench held that the Punjab Government acquired the undertaking, and hence the said decision may not cover the present case, which is a case of an acquisition of ~~a Company and not~~ the properties of a Company, & not the acquisition of an undertaking. The latter case is similar to the present case, since the Bengal Government requisitioned the building of a hotel, which was deemed to be a business of an undertaking.

The Madras High Court may dis-agree with the view taken by the Lahore High Court, of that of the Calcutta High Court, and may come to a different conclusion, that the properties of a Company ~~may~~ can be acquired under ~~Section~~ Rule 75-A of the Defence of India Rules. But the District Court, Coimbatore, has to follow the rulings of the Madras High Court, in preference to the rulings of other High Courts, if the view of the Madras High Court is different from that of other High Courts. If, on the other hand, there is no decision of the Madras High Court on the point, the District Court may have to follow the ~~rulings~~ rulings of the other High Courts, since the Defence of India Act is an all-India Act. In view of the above said circumstance,

the matter was argued in the Court to-day. Another decision of a Bench of two judges on the same point, reported in 49 C.W.N 583, was brought to the notice of the District Court, by me. In the decision in 49 C.W.N. 583, it was held that properties referred to in Rule 75-A cover all kinds of properties, including business ad its good-will, and that the requisitioning of a building of an undertaking (i.e. of a hotel) is not ULTRA VIRES of the Rule, and that the provisions of Rule 75-A are not in conflict with Section 299(Cl-2) of the Government of India Act, 1935.

This decision is a ruling of two judges, and the view of this Bench is against the view of the single judge in 49 C.W.N. 322.

In view of the ruling in 49 C.W.N. 583, the District Court is considering the matter afresh, and has adjourned the suit to 24-11-45.

K. Bhaudewam

Government Pleader.

Sri. K. Thandavam Chettiar, Government Pleader, Coimbatore.	TO 72374-D/45 The Secretary, Devlopment Dept., Government of Madras, Madras.

Coimbatore, d/- 24th Nov. 1945.

Your ref: No. 11903 - D / 45. (in dd)

Sir,

Sub: O. S. No. 2 of 1945, District Court, Coimbatore-
Kollegal Silk Filature Limited.

The District Judge has adjourned the suit to 26-11-45 for pronouncing judgment in the suit.

K. Thandavam

Government Pleader.

From

Sri. K. Thadavam Chettiar,
Government Pleader, Coimbatore.

To

The Secretary,
Devloomant Department,
Government of Madras, Madras

UNDER SECRETARY
27 NOV 1945

Coimbatore, D/- 26th Nov. 1945.

Your ref: No. 11903 - D /45

Sub: O. S. No. 2 of 1945, District Court, Coimbatore
Kollegal Silk Filature Limited.

The District Judge has pronounced judgment to-day in O.S.No. 2 of 1945, dismissing the suit. I have applied for the copies of the Decree and Judgment. I shall send the same, as soon as the copies are granted.

K. Thandavam

Government Pleader.

W/22

NS 81
Hyd 20/52

25883/45

O MF Coimbatore 26/5
Document marked X
memorandum 11903 of last
abstract Court dismissed
kollegal filatures
Suit today
2 Government
pleader 2

To U.S.
Submitted for perusal.
The Copies of Judgment & Decree promised at 'H' on p 3 above / maybe awaited till 10.12.45
DRG 27.11.45

28/11/45 S A2

Dr. Dept

28/11 hrs

SECTIONAL MAIL LIST from to

DUE MAILS: total number despatched (*vide* details below).
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Total =

Explanation of any discrepancy between the number of due mails despatched and the number due to be despatched as entered in the sorting list

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Sacks containing	Outgoing unusual bags ...	...	...	...	...	...	...	...	...
	Total ...								

GRAND TOTAL ...

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R. O.

D. O.

(Countersigned by me)

[III-1271/RS/36].

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E 4743 D/45

C.F. 32.(a).

In reply, please quote number, date and short title.*

Industries & Commerce DEPARTMENT.

UNDER SECRETARY
Registered 30 NOV 1945
DEVELOPMENT DEPARTMENT

Received

From (Name) A.Khaleeli, Esq., I.C.S.

(Designation) Director of Industries and Commerce.

Post Box 432, (Station) Madras

Telegraphic Address

To

The Secretary to Government,
Development Department,
M a d r a s.

No. D5-2160/42 *dated* 27th November 1945

Sir,

Sub. Kollegal Silk Filatures Ltd - Acquisition of properties by Government - O.S. No.2 of 1945 of District Court, Coimbatore.

Ref. Government Endorsement No.11903-D/45-26, Development, dated 19.11.45.

I submit for the information of Government a copy of the telegram dated 26th November 1945 received today from the Government Pleader, Coimbatore.

for Director of Industries and Commerce.

ENCLOSURES

1 photo abmo

SPARE COPIES

1 p 126 bkts

Copy of Telegram dated 26th November 1945.
om the Government Pleader Coimbatore to the
rector of Industries & Commerce, Madras.

--

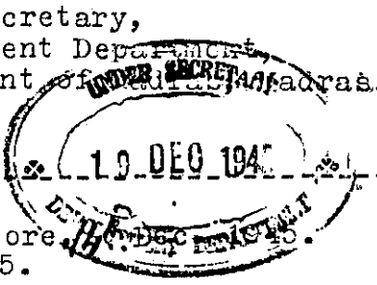
"MEMORANDUM 11903 DATED 45 DISTRICT
COURT DISMISSED KOLLEGAL FILATURES
SUIT TODAY - GOVERNMENT PLEADER."

From

K.Thandavam Chettiar,
Government Pleader, Coimbatore.

To

The Secretary,
Development Department,
Government of Madras.



Coimbatore, 18th Dec 1945.

Ref: Memo No. 11903 - D/45.

S i r,

Sub: Suits - Kollegal Silk Filature - O-S.No. ~~20~~ 2 of 1945.

I have applied for the copies of the decree and the judgment. They may be ready in about two weeks. The following is a summary of the findings of the District Judge on the issues in the suit:-

The Government are entitled to requisition and acquire the movable and the immovable properties of a company under Rule 75-A of the Defence of India Rules. The District Court has followed the ruling of the Bench of the Calcutta High Court, reported in 43 Calcutta Weekly Notes, page The acquisition by the Government is INTRA VIRES , legal and binding upon the plaintiff.

2. The plaintiff is not entitled to file the suit in the Civil Court, as he is barred to do so under section 16 of the Defence of India Act.

3. The suit is barred by limitation under article 14 of the Indian Limitation Act.

4. The plaintiff is not estopped from questioning the legality of the proceedings.

5. The plaintiff is not entitled to claim damages fro the Government.

On the basis of the above said findings, the District Court dismissed the suit and directed the plaintiff to pay ~~the~~ costs to the Government.

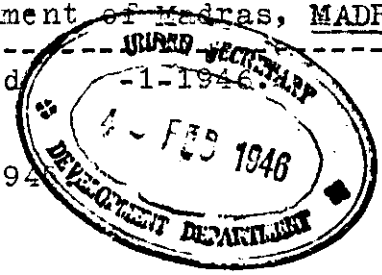
K. Thandavam

Government Pleader.

From
Sri K.Thandavam Chettiar,B.A.,B.L.,
Government Pleader,
C O I M B A T O R E.

To
The Secretary to Government,
Development Department,
Government of Madras, MADRAS.

No. dated -1-1946.



Sir,

Kollegal Silk Filature Ltd.,
Sub:--Suits - ~~KXSYPXLtd~~ - O.S.No.2 of 194

Ref:--Your Ref.Memo No.11903-D-45-29.

I have applied for copies of the depositions and the documents in O.S.No.2 of 45. The stamp papers have been ~~xxkxd~~ called for and stamp papers have been deposited into Court for the copies. The copies may be ready in a few days.

Kollegal Silk Filature Ltd.,
As the ~~KXXXXXXXXX~~, is likely to file an appeal in the High Court against the decree in O.S.2 of 45, I shall send a note on the points,which the plaintiff may urge before the Appellate Court by referring to the copies of documents and the depositions.

The copies of the decree and judgment have been received. As soon as the other copies are received, I shall send them with

my remarks
~~my remarks~~ shortly.

K. Thandavam

CKS. Government Pleader.

Copy to the Director of Industries and Commerce, Chepauk, Madras

No.2160-D/42.

Office of the Director of Industries and Commerce, Madras, dated 23.3.46.

From

Sri Rao Bahadur N.M.Adyanthaya, B.Sc.(Edin.),
Director of Industries and Commerce, Madras.

To

The Secretary to Government,
Development Department, Madras.

Sir,

Sub: Industries - Kollegal Silk Filatures Ltd. - Suit against Government of Madras on the acquisition of properties.
Ref: Government Pleader's letter No.Nil. dated 11.3.46.

The suit filed by the Company against the Government of Madras before the District Judge, Coimbatore in O.S.No.2/45 praying for a declaration that the requisition and acquisition of the properties of the Kollegal Silk Filatures Ltd., are beyond the powers of Government and illegal, has been dismissed by the District Judge and the Plaintiff ordered to pay costs to the defendant. I enclose for reference and return the documents received from the Government Pleader in this connection. The Company has to pay a sum of Rs.2212-8-0 towards cost viz. Pleader's fees and court fee stamps. In order to recover this amount, the Government Pleader suggests that the sum of Rs.8000/-, a decree for which has been obtained by the Company against F.L.Silva and others, may be attached as soon as it is deposited in the Court. A copy of the Government Pleader's letter dated 11.3.46 together with the execution petition is enclosed. I request that the execution petition

may be signed by the Secretary to Government in the Development Department and returned to the Government Pleader, Coimbatore direc

for Director of Industries and Commerce.

Copy to the Government Pleader, Coimbatore.

Copy of Government Pleader's letter.

Sub: O.S.No.2/45 dated 11.3.46 District Court, Coimbatore

I am enclosing herewith the draft execution petition for your signatu

2. The judgment debtor, the Kollegal Silk Filatures Ltd., has obtained a decree against F.L.Silva and others for about Rs.8000/-. It is likely tha the defendant may deposit some portion of the decree amount or the entire decree amount in O.S.No.172/43. It is therefore necessary that an execution petition may be filed by the Government to attach the decree amount in O.S. 172/43 Sub Court Coimbatore so that the Government may be able to collect th sum of Rs.2212-8-0 due to the Government from the judgment debtor.

3. The execution petition may be signed by the Secretary to the Government, Development Department Madras, at the two places marked in pencil and sent to me urgently, so that I may file the application immediate and get an order for attachment of the decree.

Encl:

1. Copy of Court Pleader's letter dt 11.3.46. above
2. Note on the merit of the point raised by the plaintiff. * pp 7-17 of (2)
3. Decree & Judgment.
4. Exhibits P.1 & 32 & P.48

Memo no. 20052 D/46-2 d 5.4.46

Sub: Suits - Kollegal Silk Filatures Ltd. - O.S. no. 2 of 1945 in Dt. Court, Coimbatore - Decree - Recovery of decree amount from Company - Execution petition -

Ref: From the Govt. Pleader, Coimbatore, letter no. nil d 11.3.46

The execution petition sent by the Govt. Pleader, Coimbatore is returned to him, (duly signed) ~~after due attestation~~ by the secretary to the Govt., Development Dept.; ~~to be sent by the Govt. Pleader~~ Coimbatore. He is requested to take ~~speedy~~ urgent steps to recover the decree amount from the Comp.

2. The attention of the Govt Pleader, Coimbatore is invited to Order XXI - Rule 11(2) of the Civil Procedure Code. The Collector of Coimbatore may sign future Execution petitions in respect of the decree after he acquaints himself with the facts of the case and such petitions need not be sent to the Govt for signature.

29/3/46 Addl 29.3.46

The Govt. Pleader, Coimbatore (with enclosures)

Copy to the D.D & C., with reference to his letter no 2160 J/42 d 23.3.46.

~~Document~~ (with documents sent with the letter)

Copy to Collr. of Coimbatore.

No 2-5.

Please see the D.D & C's letter at pp 1-2 c/f.

~~Before signing the execution petition, it may be sent to Legal Dept. for advice in the question whether the Execution petition may be signed by the Secretary.~~ The decree and the judgment ~~placed below~~ put up may be perused, as well as the note of the Govt. Pleader at pp 5-17 of (2). A draft memo to the Govt. Pleader is submitted above for approval. The case may be sent to Legal for acceptance of the draft above and for remarks, if any.

29/3/46 Addl 29.3.46

Legal.

Legal Department

The draft may issue, as slightly altered in red. // Future execution petitio may be signed by the Collector of

G.O. 0520/46-1 29-3-46

ASSISTANT SECRETARY
30 MAR 1946
LEGAL DEPARTMENT.

216 C

Coimbatore. All that is necessary before he does so is that he should be acquainted with the facts of the case - See Order XXI, Rule 1(2), of the Civil Procedure Code. It is open to the Collector to acquaint himself with the facts of the case and thus equip himself with the capacity to sign the execution applications.

KMR 1/4/46

A/ at p 250 ff unspecified ... Acts Vol V ...

4·02 16 (illegible)
1-4-

UNDER SECRETARY 2-APR 1946 GOVT DEPARTMENT

2253 D/46

Dev Dept

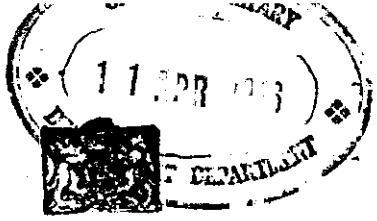
It is in note of Legal Dept at pp 1-2 above: Apparently, Legal Comments with the execution petition in regard of the cases need not be sent to the Court for Signature.

With reference to the latter portion of the Legal note at pp 1-2 above, another para has been added to the draft covering. For orders whether it may be amended.

the Govt may kindly see at A+C p 204 Z)

4.4.46 KMR 4/4

4.4.46



1617

23374 / 46

INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

No.

Received here at ____ H. ____ M.

To Wib.

Draft memo - Mr. G. Khosla,
Secretary for approval

The ... at the beginning of this telegram is—class of telegram, time handed in
... number ... a trucitum if
... and ...

... this telegram

Please arrange by Registered Post

Memo no. 23974 D/46-1 d 11.4.46

Subj: Suits - K Mayil Silk Factories, Ltd. - O.S. no 2 of 1945 Dt. Court, Coimbatore - Copy of decree - forwarded to the Govt. Pleader, Coimbatore

Ref: From the Govt. Pleader, Coimbatore, telegram ~~dated~~ d 10.4

Copy of ~~the~~ —

The decree ~~Copy~~ in suit no. O.S. 2 of 1945 is herewith (returned) to the Govt. Pleader, Coimbatore, as desired ~~by him~~ in the telegram cited.

11/4/46 D.D. 11.4.46

To The Govt. Pleader, Coimbatore
(with encl.

Copy to DDBe. Call for encl

Thu 11/4/46 CC 11/4 SC

OFFICE OF THE

194 , Hours Minutes.

TELEPHONIC MESSAGE

UNDER SE... 1 APR 1946 DEVELOPMENT DEPARTMENT

From

D. I. L. C

ind:- Industries - Seri-
culture - Kollegal
silk Filatures - Kollegal
suit against Govt. of
Madras - on the
acquisition of property
Ref:- My letter No 2160
D/42 dated 23.3.46.

The Govt pleader
concerned has wired for
the ~~dis~~ decree copy
suit No. O.S. II/45
sent to Govt with my letter
cited. It may kindly be sent.

OFFICE OF THE _____ GCP. 864. 14

Date _____ 194__, Hours _____ Minutes _____

TELEPHONIC MESSAGE

From	To

to him direct with
endorsation to me.

12/11/46

Aco Dept

Toi 2 5.

No action is called for on this
T.M. as the decree copy has already been
sent by Registered post to the Govt. Pleader, 67
Coimbatore, under advice to the D.D.C.

12/4/46

12/4/46

12/4/46

From
Sri K.Thangavam Chettiar, B.A.B.L.,
Government Pleader,
Coimbatore.

To
The Secretary to the
Government of Madras,
Development Department,
A S.

UNDER SECRETARY
16 APR 1946
DEVELOPMENT DEPARTMENT

No. dated.

1588 D/46

Sir,

Sub:- O.S.No.2/45 - District Court - Coimbatore - Kollegal Silk Filatures Limited.

Ref:- Memo. No. 11902/D/45-

The fair execution petition in O.S.2/45 was received and was presented in the District Court, Coimbatore. The decree in O.S.2/45 was subsequently received and it was also presented in the District Court on 12/4/46.

The Court is closed for summer recess from 13/4/46. and it will re-open on 15/6/46. The Court will pass orders on the petition after 15/6/46.

K. Thangavam
Government Pleader.

To 2-5.

. Submitted for personal. These papers may now be added to the G.O. at (9) and a C. Bently made against 1- 9-46 ~~15-9-46~~ regarding report re 'Hilarious'.

18/9/46 ~~20.9.46~~ 20.9.46

Replied

Document no. 2 has also been sent to H. Council for local purposes as a civil matter.

C. Bently no. 661 dated 16 Sept 1946

Office of the Director of Industries & Commerce, Madras dated 12-4-46.

Post copy of Telephonic Message dated 12-4-46 from the Director of Industries and Commerce, Madras to the Secretary to Government, Development Department, Madras.

- .O.D/46

UNDER SECRETARY
16 APR 1946
DEVELOPMENT DEPARTMENT

Sub: Industries - Sericulture - Kollegal Silk Filature Kollegal suit against Government of Madras - on the acquisition of properties.

Ref: My letter No 2180 D/44 dated 23-3-46.

The Government Pleader, Coimbatore has wired for the decree copy of suit no.O.S.2/45, sent to Government with my letter cited. It may kindly be sent to him direct, with intimation to me.

for Director of Industries & Commerce.

S.B/12-4

Copy of decree

IN THE COURT OF THE DISTRICT JUDGE, OF COIMBATORE
O.S.No.2 of 1945.

Valuation slip.

* *** * **

4. Othe rmoveable propeVty,

If houses or gardens the market value	36832	1	0
Total	Rs.36832	1	0

Sd. P. S. Balakrishna Ayyar,
Pleader for plaintiff.

(By Order)
(Sd.) S.Viswanatha Ayyar,
Sheristadar.

(True copy)

superintendent.

IN THE COURT OF THE DISTRICT JUDGE OF COIMBATORE.

Present: S. P. Thompson Esquire B.E., I.C.S.
District Judge.
Monday the 26th day of November 1945.
Original Suit No. 2 of 1945.

The Kollegal Silk Filatures, Ltd., Kollegal, Coimbatore Dt./Plainti

Against

The Province of Madras, represented by the Secretary to Government Development Department, Fort St. George, Madras. Defenda

Suit for a declaration that the requisition and acquisition of the plaintiff's factory at Kollegal under the orders of Government dated 12th March 1943 and 30th March 1943 are beyond the powers of Government and illegal, for an order directing the defendant to hand over possession of the properties moveable and immoveable to the plaintiff or in the alternative to direct the Government to hand over possession of the prperties after the period of the War and six months thereafter if the present possession by the Government be held to be valid, for directing the defendant to pay the sum of Rs.61,500 as damages, consequent upon the illegal requisition and acquisition of the properties of the plaintiff up to the date of suit and to pay damages at the rate of Rs.3000 a month up to the date of delivery of possession and for costs of the suit with--subsequent interest.

Date of suit 1-12-1944
Cause of action arose in March-April 1943.
Value of claim Rs.1,41,461-7-0

This suit coming on for hearing before me on the 21st and 23rd days of November 1945 in the presence of Sri P.S.Balakrishna Ayyar advocate and Sri C. V. Ramasesha ayyar - Vakil for the plaintiff and of Sri K. Thandavam Chettier advocate for the defendant and having stood over to this day for consideration, this court doth order and decree that this suit be and the same hereby is dismissed and that the plaintiff do pay defendant Rs.2212-8-0 towards costs of suit and bear its own own Rs.5570-1-0 as detailed below.

Particulars of cost.	For plff. Rs. a. p.	Fr defendant. Rs. a. p.
1. Stamp o n plaint	2332 7 0	
2. Do for power.	2 0	
3. Do on petitions.	3 12 0	1 8 0
4. Pleaders fee.		2211 0 0
Senior	2211 0 0	
Junior	737 0 0	
5. Subsistence allowance for witnesses	276 0 0	
6. Service of process	6 6 0	
7. Preparation of process.	1 0 0	
Total Rs	5570 0 0	2212 8 0

Schedule of properties acquired.

Lands described below together with the buildings etc. thereon in the District of Coimbatore.

Taluk and Firka.	Village	Field Survey No	Extent
Collegal	Mudigundam	91A	0-79 acres.
"	"	92	4-52 "
"	"	93	0-25 "
"	"	213A	1-21 "
"	"	213B	1-52 "
"	"	225	1-97 "
"	"	228	1-78 "

and all wells, walls, out houses and all appurtenances. 150 Silk Reeling basins and connected machinery 2 Steam Boilers 1 Steam Engine 2 Stiflin chambers 1 Bundling press 2 Pumps 1 safe, stands, workshop stoos, Furnitu e, Scientific instruments, Silk Examinat stands, Carts, Cycles, One pairs of bulls.

Three water carrying drums and all stock of raw materials possessed by the Company for the manufacture of silk and all machineries tools, plant and apurtenances thereto and goodsthat the Government to possession of.

Given under my hand and the seal of the court this 26th day of November 1945.

(Sd.) S. P. Thompson
District Judge.

The original of t his bo.. seal of the court of the Distri Judge of Coimbatore.

(True copy

Superintendent.

Original with Copy of Judgment

(Enclosure to Memo No. 20052-D/46-2 dated 5th April, 1946.)

In the Court of the District Judge of Coimbatore.

Present: S.P.Thompson Esquire O.B.E., I.C.S., District Judge.

Moday the 26th day of Novemberm 1945.
Original suit No.2 of 1945.

The Kollegal silk Filatures Limited Plaintiff.
The Province of Madras represented by the Secretary to the Government of Madras, Development Department. Defendant.

This suit coming on for hearing on 21.11.45 and 23-11-1945 before me in the presence of Sri P.S.Balakrishna Ayyar advocate and Sri C.V.Ramaswamy Ayyar vakil for the plaintiff and of Sri K. Thandavam Chettiar, advocate for the defendant and having stood over to this day for consideration the court delivered the following

JUDGMENT.

This is a suit brought by the Kollegal Silk Filatures Limited against the Province of Madras for a declaration that the requisition and acquisition of the plaintiff's factory at Kollegal under the orders of Government dated 12th March 1943 and 30th March 1943 are beyond the powers of Government and illegal, for an order directing the defendant to hand over possession of the properties movable and immovable, to the plaintiff or in the alternative to direct the Government to hand over possession of the properties after the period of the war and six months thereafter if the present possession by the Gover ment be held to be valid, for directing the defending to pay the sum of rupees 61500 as damages, consequent upon the illegal requisition and acquisition of the properties of the plaintiff up to date of suit and to pay damages at the rate of Rs.3000 a month up to the date of delivery of possession and for costs of the suit with subsequent interest.

2. The plaint allegations are that the plaintiff is a limited company formed inter alia for carrying on the business of silk filatures (i.e. reeling silk from Cocoons in filature basins) and for that purpose has acquired lands, built factories and erected plant and machinery. The plff. has been manufacturing and s ling its produce since 29th November 1937. The Government of Madras have taken shares in the company and have a representative on the Board of Directors. Plaintiff was supplying silk to Government as silk was required on the outbreak of the war for the manufacture of parachute fabric. The Director of Industries and Commerce Madras served on the plaintiff an order dated 12th March 1943 requisitioning the Kollegal silk Filatures Limited under the Defence of India rules The order states that under section 75-A of the Defence of India Rules. His Excellency the Governor of Madras had been pleased to requisition from the date of the service of the Order the immovable and moveable properties specified in the schedule to the order. In execution of this order, the Government took possession of the plff's business inclusive of all the immovable and moveable properties on the 16th March 1943. Subsequently on the 30th March 1943, the Director of Industries and Commerce served on the plaintiff a communication purporting to be under Rule 75-A (2) of th Defence of India Rules giving notice that the Government of Madras had decided to acquire the properties which had already been requisitioned. Plaintiff protested against the order of acquisition as illegal and on 5th June 1943, the plaintiff's Board of Directors send a memorandum objecting to the acquisition and to the compensation offered by the Director of Industries and Commerce for the properties. As the offer was not accepted by the plaintiff the Government appointed the District Judge, Coimbatore as Arbitrator for the determination of the compensation payable for

the plaintiff .....

ks.11/4.

company's immoveable properties after proper classification into moveable and immoveables. It is contended that the plaintiff's business is an industrial undetaking falling under Rule 81 of the Defence of India Rules and no moveable and immoveable property within the meaning of Rule 75 A. Neither the ordinary law nor the Defence of India Act contemplates or authorise or permits the extinction of an industrial undertaking or of the company, which carried it on, by acquisition or even by requisitioning it. Further the acquisition under Section 75-A of the properties of the plaintaiff, is illegal as the properties are really integral and inseparable parts of an industrial undertaking which has, to be dealt with under Rule 81 and not under rule 75-A. Under Rule 81 the control over an industrial undertaking does not include either the requisition or the acquisition of an undertaking or the moveable and immoveable properties integral or inseparable from it. The plaintiff estimates its loss caused by the continued possession of the company's properties by the Government at Rs.36,000 per year and claims to recover this from Government up to the date of redelivery of the property to it. If the court should hold that under the Defence of India Rules the Government had the right to requisition and control the undertaking, it should be declared that they were not entitled to acquire it and they should be directed to hand over possession of the undertaking to the plaintiff after the cessation of hostilities of six months thereafter with compensation as claimed.

3. In the written statement of the Province of Madras, it is contended that certain specified moveable and immoveable properties belonging to the plaintiff's company were requisitioned under rule 75-A of the Defence of India Rules and ~~it~~ that it is not correct that the defendant took possession of the plaintiff's business. On the 30th March 1943, the defendant passed orders for the acquisition of the properties requisitioned. The plaintiff did not protest against the order of acquisition as illegal. On the other hand the plaintiff was claiming a large amount as compensation for the items of property acquired by Government. The items of properties - acquired are not integral and inseparable parts of an industrial undertaking and do not form an industrial undertaking falling under Rule 81 of the Defence of India Rules. The fact that it was open to Government to exercise the power of supervision and control under Rule 81, did not preclude them from exercising their powers under rule 75-A to requisition and acquire any moveable or immoveable property. Even if the properties form integral or inseparable parts of an industrial undertaking, the Government had the right to requisition and acquire the properties. The compensation awarded for the property requisitioned and acquired cannot be questioned in a court of law. Plaintiff is not entitled to claim any amount as damages from Government as the acquisition was made by Government in good faith and in pursuance of the powers conferred on Government under the Defence of India Act and the rules framed thereunder. Plaintiff has not suffered loss by the acquisition of the properties. The amount of the loss estimated by the plaintiff is grossly exaggerated. Plaintiff is not entitled to claim possession of the properties at any time. Plaintiff has no cause of action. The suit has not been properly valued for purposes of Jurisdiction and court fees. Plaintiff is not entitled to file this suit in a civil court as he is debarred from questioning the necessity for passing the orders of requisition and acquisition of the correctness or validity thereof in a civil court under section 16 of the Defence of India Act.

The orders and acts of Government are not illegal or ultra vires. The suit is barred by limitation and the plaintiff is not entitled to any relief.

4. An additional written statement was also filed stating that the Government fixed the sum of Rs.79961-7-0 as the amount of compensation payable in this case. The plff made a claim for a larger sum but has received the sum of Rs.79961-7-0 from the Governwent. As the plaintiff has received the amount of compensation fixed by Government and has claimed a larger amount of compensation, the plaintiff is estopped from questioning the legality or binding nature of the proceedings of Government under Rule 75-A of the Defence of India Rules and from filing a suit in a civil court for a declaration that the proceedings of the Government under Rule 75-A of the Defence of India Rules are beyond the powers of Government and illegal or for recovery of possession of the properties which were acquired by Government or for recovery of any damages from the Government.

5. The following issues were framed by my learned predecessor

1. Whether the acquisition in question is not valid for the reasons mentioned in the plaint?

2. Whether the acquisition is without power and untra vires and illegal?

3. Whether this suit is not maintainable for want of jurisdiction?

4. Whether the plaintiff is entitled to damages and if so, to what extent?

5. Whether the suit is barred by limitation?

6. What is the other relief open to the plaintiff?

Additional issue.

7. Whether the plaintiff is estopped from questioning the validity and legality of the acquisition of the Silk Filatures in question on account of their having induced the Government to believe that they had no objection to the acquisition as such and on account of the Government having acted under this belief and on account of the com-pany having act-ually taken away the amount deposited by Government while reserving their right to claim more and not any right to question the acquisition itself?

6. Issues 1 and 2, these two issues which cover the same point are the important issues in this case and the decision on issues 3 and 5 will follow the decision on issues 1 and2. Put briefly, the plaintiff's case is that by requisitioning and acquiring the immoveable and moveable properties specified in the requisition Order Ex. P-13 and the acquisition notice, Ex.P-1 the Madras Government have in fact requisitioned and acquired an industrial undertaking for which there is no provision in the Defence of India Act and the

and the Defence of India Rules.

7. There is no doubt in this case that the Government by requisitioning and acquiring the land, factory, machinery etc., which form the plaintiff's silk filature factory at Kollegal took over a going concern and proceeded to work it as such. The properties were not taken for any other purpose. The land was not put to any other use and the machinery was not dismantled and taken for use in any other factory. The property was taken possession of on the 16th March 1943 by R.W.1, Mr.K.T.Achaya, then the Sericulture Expert to the Government of Madras and on the same da e Mr.R.Perchaud (D.W.1.) took over the technical side of the factory. Whatever the condition of the factory at that time 43 pounds of silk were produced on 18th March 1943 and 50 pounds on 19th March 1943. Use was made of the stock of cocoons and fuel on hand. It appears that the staff was taken over as far as possible, see Ex. P--17 a letter of the Director of Industries and Commerce dated 19th March 1943 to P.W.2., Mr.Ganesa Ayyar, the Managing Director of the company. Even the plaintiff's account books were used and eventually paid for. The Government contend that they were merely manufacturing silk with the help of the requisitioned properties and other properties after 16th March 1943. There is no doubt that the Government took over the factory as it stood and proceeded to work it, even though it appears that they had to improve the condition of the machinery and run the factory in a more efficient manner.

8. It does not however follow that the Government requisitioned and acquired any industrial undertaking. An industrial undertaking is something more than a mere factory. It includes the whole organisation of the company owning the factory. The prospectus of the plaintiff company Ex.D-3 shows that other activities in addition to the business of silk filatures were within the scope of the company. After the acquisition of the factory at Kollegal, the Board of Directors continued to function. They appear to have had funds at their disposal and their business could have been carried on. It may have been difficult in war time to set up another silk filature factory but by requisitioning and acquiring the immoveable and moveable property specified in Exs.P-1 3 and D--1 the Government did not take over the industrial undertaking known as the Kollegal silk filatures Limited. This is clear from the orders themselves. The company as such continued. It appears from Ex.P--11 that in November 1942 Mr.K.T.Chaya, then Government director of the plaintiff company proposed that the company with all its property and assets, capital and liabilities should be taken over but this was not done. All that the Government did was to take over the immoveable and moveable property forming the factory at Kollegal belonging to this company. I am unable therefore to accept the contention of the plaintiff that an industrial undertaking was requisitioned and acquired under Rule 75-A of the Defence of India - Rules in this case.

9. The plaintiff's contention that the Government had no power to requisition or acquire an industrial undertaking is based on Section 299 (2) of the Government of India Act 1935, section 19 of the Defence of India Act and rules 75-A and 81 of the Defence of India Rules. Section 299(2) of the Government of India Act 1935 provides that neither the Federal nor a Provincial Legislature shall have power to

make any law authorising the compulsory acquisition for public purposes of any industrial undertaking, or any interest in, or in any company owning any industrial undertaking, unless the law provides for the payment of compensation for the property acquired. Section 19 of the Defence of India Act provides that where any action is taken of the nature described in sub-section (2) of Section 299 of the Government of India Act, there shall be paid compensation. Sub-rule (1) of Rules 75-A of the Defence of India Rules proves that the Government may by order in writing requisition any property moveable or immoveable, and may make such further orders as appear to Government to be necessary or expedient in connection with the requisitioning Sub-Rule (2) of Rule 75 provides that where the Government has requisitioned any property under sub-rule (1) the Government may use or deal with the property in such manner as may appear to it to be expedient and may acquire it by serving on the owner thereof notice stating that the Government has decided to acquire it in pursuance of this rule. Rule 81 (2) (c) says that the Government may by order provide for regulating the carrying on of any undertaking engaged in or capable of doing, work appearing to the Government essential to certain specified purposes. In Rule 81 (1) it is stated that in this rule the expression."undertaking" means any undertaking by way of any trade or business. The contention of the plaintiff accordingly is that section 299 (2) of the Government of India Act 1935 requires the payment of compensation for the property acquired i.e, payment for the industrial undertaking acquired valued as an industrial undertaking. Section 19(1) of the Defence of India Act makes provision for the payment of compensation when any action of the nature described in section 29 9 (2) of the Government of India Act, 1935 is taken. When the amount of compensation can be fixed by agreement, it has to be paid accordingly. When agreement cannot be reached an arbitrator has to be appointed. The arbitrator in making his award must have regard to the provisions of Sub-section(1) of section 23 of the Land Acquisition Act - 1894 and also consider whether the acquisition is of a permanent or temporary character. Section 23 (1) of the Land Acquisition Act provides that in determining the amount of compensation to be awarded for land acquired, consideration must be taken of the damages sustained by the person interested by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner or his earnings. Section 19 of the Defence of India Act therefore covers compensation for every kind of damage that a party can suffer by the Requisition or acquisition of his property moveable or immoveable. When therefore under Rule 75-A property moveable or immoveable is requisitioned or acquired, compensation has to be paid not merely for the value of each particular item of property, moveable or immoveable, as a tangible objection having a monetary value, but consideration has also to be taken of the fact that the property requisitioned or acquired when taken together has an earning capacity. This covers any claim that the plaintiff company in this case may have for the taking over by Government under Rule 75 A of the Defence of India Rules of their factory at Kollegal. My opinion is that an industrial undertaking is something wider than a mere factory, but even if the factory by itself is regarded as an industrial undertaking, It only consists of moveable and immoveable property. Rule 75-A provides for the requisitioning and acquiring of moveable or immoveable property, and there is provision in the Defence of India Act and the rules framed thereunder for the payment of proper compensation. I cannot therefore hold that the orders of Government in this case requisitioning and

acquiring the factory of the plaintiff company are illegal.

10. The plaintiff company contends that the proper order with regard to an industrial undertaking is one under rule 81 which provides for regulating the carrying on of an industrial undertaking. In some cases it may not be necessary for the Government to actually requisition an industrial undertaking, that is, to take possession of it or go a step further and acquire it. It may only be necessary to issue orders to the company or the person carrying on a business so as to ensure that it is conducted in the manner which Government requires. The existence of Rule 81 for regulating the carrying on of an industrial undertaking does not in my opinion prevent the Government from requisitioning or acquiring and industrial undertaking under Rule 75-A.

11. The plaintiff relies on two decisions. The first is the judgment of a full Bench of the Lahore High Court in the Lahore Electric Supply company Limited versus, The Province of Punjab (I.L.R) XXIV Lahore 617) and the decision of a single Judge sitting on the original side of the Calcutta High Court in Mackertich John V.H.C.Gupta (49 Calcutta Weekly Notes 322).

12. The facts of the Lahore case were that the Lahore Electric Supply Company Limited had a licence under the Indian Electricity Act 1910 which was due to expire on the 25th November 1942. The Punjab Government wished to take over the company on the expiry of the licence. There were disputes between the company and the Provincial Government and on the 5th November 1942, a requisition order under Rule 75 A of the Defence of India Rules was served on the Company. This was followed by an acquisition order under Rule 75 A on the 16th November 1942. The requisition order was held to be invalid on two grounds. The first was that moveable and immoveable property only can be requisitioned or acquired under Rule 75A and that rule is not applicable to the requisition or acquisition or an undertaking or a going concern. The second ground was that the requisition an acquisition were not bona fide for the purposes stated in the order but for a collateral purpose not arising under the Defence of India Act or Rules. The learned Chief Justice stated at page 639:-

"In my opinion it is impossible to argue that an undertaking such as the Lahore Electric Supply Company which was what has been called a "going concern" was nothing but a collection of items of moveable and immpveable property. A careful examination of the provisions of Rule 75-A shows conclusively that this rule is not applicable at all to the requisition or acquisition of an 'undertaking' and indeed a careful reading of the order of requisition itself shows this to be so."

The order in that case stated that the Governor of the Punjab was pleased to requisition all the property, both moveable and immoveable belonging to or under the control of the undertaking known as the Lahore Electric Supply Company Limited. The whole of the business of the company was in fact taken over by the Government. That is not so in the present case. Moreover it seems to me that the main ground on which the order of the Punjab Government in that case was held to be illegal was that it was not a bona fide order as the Provincial Government were not taking over the company because it was expedient to do so, for the maintenance of

supplies and services essential to the life of the community which was the purpose stated. His Lordship Muhammad Munir J. in agreeing with the order passed in that case stated that the order impugned was not an order requisitioning moveable and immoveable property simpliciter but an order requisitioning a undertaking which is not authorised by Rule 75 A or by any other rule framed under the Defence of India Act. I am informed that an appeal against this decision was filed in the Federal court but was withdrawn as the company and the Provincial Government settled their differences.

13. In the Calcutta case the order under Rule 75-A of the Defence of India Rules was issued to the owner of a hotel. The ground floor of the hotel had already been requisitioned as a Military Canteen. The order impunged in that case requisitioned the rest of the building and it was proposed to carry on the business hitherto conducted by the proprietor in the same manner ie. to provide sleeping accommodation. Mr.Justice Das held that by taking the property the Government were taking the proprietor's business. In 49 Calcutta Weekly Notes 329 His Lordship stated:-

"In my judgement the impunged order not only requisitions the buildings, but under the guise of requisitioning the building it also requisitions the business under taking of the petitioner, for the goodwill of his business which is attached to the buildings must necessarily go along with them. This cannot be done under Rule 75A as has been held in The Lahore Electric Supply Company's case. Even if the order does not directly requisition the business, it certainly indirectly does so. It is a quite well established principle of Law that a thing which cannot be done directly cannot be done indirectly."

14. An appeal was however filed against that decision and it was heard by Their Lordships the Chief Justice and Mr. Justice Gentle of the Calcutta High Court. The judgment in appeal is reported in 49 Calcutta Weekly notes 583. The Decision of His Lordship Mr.Justice Das was upset. His Lordship the Chief Justice in his judgement held that the hotel requisitioned was an undertaking within the meaning of section 299 of the Government of India Act 1935 and - Rule 81 of the Defence of India Rules but in disagreement with the Full Bench decision of the Lahore High Court His Lordship stated at 49 Calcutta Weekly Notes 587 that the words "any property, moveable or immoveable in Rule 75-A, must necessarily include all kinds of property, land, buildings, machinery and chattels of any kind and any thing that can be described as property. His Lordship added that this Prima facie covered a business and its good will. There is a proviso to Rule 75A(1) which excludes property used for religious worship, ships and their contents and aeroplances and their contents. His Lordship stated at 49 Calcutta Weekly notes 587:-

'If it had been desired to exclude businesses and their component parts including goodwill, the section could easily have provided for such exclusion. There are good reasons why business and parts of business and the goodwillare not excluded, since such property essential for the purposes of rule 75-A(1) may be part of some business. Indeed in most cases such essential proerty would only be likely to be found in such businesses."

His Lordship also referred to the provisions of section 23 (1) of the Land Acquisition Act and held that even though the requisitioning of the hotel in question might for a time if not permanently interrupt and damage the proprietor's business that did not prevent the Government from requisition

requisitioning the land and buildings for proper purposes. Mr. Justice Gentle agreed and stated at 49 Calcutta Weekly Notes 591 that a commercial undertaking can be requisitioned under Rule 75 A as a commercial undertaking is moveable property. This appellate judgment was delivered on 30th April 1945 and it is not known if any appeal has been filed in the Federal court.

15. The plaintiff also contends that under section 15 of the Defence of India Act, the Government should have have requisitioned and acquired the factory under rule 75-A but should only have issued an order under Rule 81. Section 16-(1) of the Defence of India Act, however provides that no order made in exercise of any power conferred by or under that Act shall be called in question in any court. It is certainly not the function of the Civil Court to decide whether the executive authority was right in choosing one of two or more courses open to it, provided that the executive authority exercised its discretion bona fide. In this case the bona fide of the provincial Government has not been called into question in any respect. The validity of the Government orders in this case cannot be attacked by relying on section 15 of the Defence of India Act.

16. I accordingly find that the requisition and acquisition orders in this cases were not ultra vires and accordingly were not illegal or invalid.

17. Issue 3. Section 16(1) of the Defence of India Act provides that no order made in exercise of any power conferred by or under that Act shall be called in question by any court. This suit is accordingly not maintainable and this court has no jurisdiction to question the orders since they were made in exercise of the power conferred by Rule 75-A of the Defence of India Rules. Only if the orders were ultra vires would the civil court have jurisdiction to examine them. This suit is accordingly not maintainable for want of jurisdiction.

18. Issue 5. If the orders of Government were ultra vires, this suit is not barred by limitation as Article 120 of the Indian Limitation Act applies and the suit can be brought within six years. As, however, I have held that the orders of Government were intra vires, this suit should have been brought within one year under Article 14 of the Limitation Act. The suit is accordingly barred by limitation.

19. Issue 7. The contention of the defendant is that the company did not state that the orders of Government were ultra vires but merely claimed larger compensation and therefore the Government remained in possession of the property without proceeding to pass any other order, such as one under Rule 81. The memorandum of 5th June 1943 of the Board of Directors (Ex.P--21) to which reference is made in the plaint did not contain any protest that the requisition and acquisition orders were illegal. It was by a letter dated ~~the~~ 28th January 1944 (Ex.P-28) that the managing director of the company first communicated to the Director of Industries and commerce that the share holder considered that the orders of Government were ultra vires. Previously there had been only a dispute about compensation There is however no estoppel against an act which is ultra vires as no one can consent to such an act. The Government must act in accordance with the statute law and a party who does not draw attention to the statute immediately, is not estopped from doing so at a later date. I therefore find that the plaintiff is not estopped from questioning the

20. Issue 4. The plaintiff is not entitled to any damages, in this case, because there is ample provision in section 19 of the Defence of India Act for the award of proper compensation for the property acquired. The decision of the arbitrator has been given and it was to the abritrator that any claim for damages on the ground of loss of earnings should have been presented. Even if the orders of the Government were ultra vires, this court cannot award further compensation as section 19 of the Defence of India Act provides for the award of every kind of compensation and the plaintiff could not have suffered any special damages by reason of the orders being ultra vires.

21. The plaintiff claims damages on the basis that there were 150 basins in the factory. Of these about 1 00 were in working order at the time the factory was taken over. They could have produced 100 pounds of silk yarn per day and in twenty five working days per month they would produce 2500 pounds of silk yarn. In addition, about eight annas worth of silk waste would be produced for each pound of silk yarn.

There is not much dispute about these facts. The company had contracted to supply 40000 pounds of silk yarn to the Supply department at Rs.15 per pound with an escape clause if the price of cocoons fluctuated (Ex.P-4). Later this was modified to a fixed price of Rs.15-10-0 per pound without any escape clause (Ex.P-7). Eventually however, the supply Department paid the company one rupee for each pound of silk yarn produced in addition to the estimated cost of production. On the basis that the factory would produce 2500 pounds of silk yarn, and Rs.1250 of the silk waste per month the claim of the plaintiff for Rs.3000 per month is not unreasonable.

22. Ex.P--32 however shows that during the period - from 20th April 1942, until the factory was taken over on the 16th March 1943, just under 16000 pounds of silk yarn were produced. That is well under 2500 pounds per month. Plaintiff contends, however that there was considerable difficulty in getting cocoons owing to the competition of the hand spinners. In June 1943 cocoon control was introduced and the plaintiff contends that the factory would have been able to ob-tain as many cocoons as were available and would have been able to produce at 2500 pounds of silk - yarn per month. I consider that there is some justification for the plaintiff's claim in this respect though it is clear from the evidence or Mr. KT.Achaya, Sericultural expert to the Government of Madras (P.W.1) and of Mr.Peychaud, now General Manager of the Government Silk Filature company at Kollegal (D.W.1.) that the factory was in a bad state and inefficiently run. However the Government were certainly very unxious to get silk yarn for the manufacture of parachutes and in all probability, they would have given the co-mpany every facility for putting the factory into first class working order and would have provided the necessary technical advice. Though the factory might not have produced as much as it did, after it was taken over by Government, I think it is not unreasonable to estimate that it would have produced 2500 pounds of silk yarn per month for which the supply Department would have paid one rupee per pound over the cost of production. The company have lost these earnings and their claim for Rs.3000 as damages on that basis is not unreasonable. The fact that the company was rarely earning a profit before the war is not very important as War conditons are exceptional.

However, the company have received over Rs.79000 as compensation for the acquisition of the property. The total issued capital of the company is Rs.177380(See Ex.P-41). The company cannot therefore claim damages at the rate of Rs.3000 per month for an indefinite period. I think damages would have to be limited to, say, one lakh of rupees the difference between the compensation awarded and the total capital of the company. The question of damages is however hypothetical. The orders of Government were legally passed and compensation has been awarded in accordance with law. Therefore the plaintiff is not entitled to any damages.

23. Issue 6. The plaintiff is not entitled to the declaration prayed for. Nor is it entitled to ask for the return of the property.acquired. This suit is accordingly dismissed with costs.

Pronounced in open court this 26th day of November 1945.

(Sd). S.P.Thompson.
District Munsif.

List of admitted documents. For Plaintiff.

P-- 1/4-3-1942. Post copy of telegram from the Sericultural Expert, Kollegal to the War Supply Department Textile Directorate, New Delhi (Copy)

P--2/14-3-1942. Report of Sericultural Expert, Kollegal to Deputy Director of Supplies.

P.--3./23-4-1942. Express letter from the Chief controller of purchase (Supply) 2-xx section, New Delhi to Messrs. Kollegal Silk Filatures Limited, Kollegal.

P--4/22-5- 1942. Letter from the Chief Controller of purchase (Supply) New Delhi to Messrs. The Kollegal Silk Filatures Ltd.,

P--5/9-6-1942. Letter from the managing agent of the Kollegal Silk Filatures Ltd., to the Chief Controller of purchase (Supply) New Delhi.

P--6/3-7-1942. Letter to the Chief controller of purchase (Supply) New Delhi from the sericultural expert to the Government of Madras and Government Directorate, the Kollegal Silk Filatures Ltd.,

P--7/11-7-1942. Letter from the Chief Controller of purchase (Supply) New Delhi to the Kollegal Silk Filatures Ltd., Kollegal.

P--8/20-9-1942. Letter from Mr.K.T.Chayya to Director - General of Supp

P --9/29-10-1942. Copy of the telegram from the Government Director the Kollegal, Silk Filatures to the Director General of Supply Textile directorates, New Delhi.

P--10/20-11-1942. Copy of letter from the Sericultural Expert an Government Director to the Director General of Supply Textile Directorate, New Delhi.

P-11/25-11-1942. Report of Mr.K.T.Achayya, Sericultural Expert.

P-12/11-2-1943. Copy of G.O.No.Ms.136, dated 6th February 1943, Development Department sent from the Office of the Director of Industries and Commerce to the Kollegal Silk Filatures.

P-13/12-3-1943. Requisition notice.

P-14/12-3-1943. Letter from the Managing Director Kollegal Silk Filatures Ltd., to Government.

P--15/15-3-1943. Acknowledgment of requisition Order by Kollegal Silk Filatures Ltd., to Government.

P--16/16-3-1943. Receipt by Government to Kollegal Silk Filatures Ltd.,

P--17/19-3-1943. Letter from Director of Industries to the plaintiff Managing Director.

P--18/20-3-1943. Letter from the Chief Controller of Pu New Delhi to the Kollegal Silk Filatures Ltd., Kollegal.

P--19/30 -3-1943. Letter from the Director of Industries and comme Sri M.S.Ganesa Ayyar, Managing Director of the Kollegal Silk Filatu Ltd.,

P--20/-27-4-1943. Letter from the Director of Industries and Comme Madras to the Managing Director of the Kollegal Silk Filatures Ltd., Bangalore.

P--21/5-6-1943. Memo by the Directors of the Kollegal Silk Filatu Ltd., to Government.

P--22/5-7-1943. Letter from the Director of Industries and Commerce to the Chairman, Board of Directors of the Kollegal Silk Filatures.

P.--23/10-8-1943. Proceedings of the plaintiff,

P.--24/3-8-1943. Receipt for Rs.43129-6-0 by the Managing Director of the plaintiff to the Director of Industries, Madras.

P--25/14-8-1943. Receipt for Rs.36,832-1-0 from Do to Do

P--26/15-12-1943. Letter from the Director of Industries and Comme Madras to the Managing Director of the Kollegal Silk Filatures.

P--27/16-12-1943. Letter from the Managing Director of the Kollega Silk Filatures Ltd., to the Director of Industries.

P--28/28-1 -1944. Letter from Do to Do.

P--29/16-2-1944. Reply letter to the above No.28, from the Directo of Industries and Commerce, Madras to the Managing Director of the Kollegal Silk Filatures Ltd.,

P--30/3-3-1944. Letter from the Director of Industries and Commerce to the Managing Director of the Kollegal Silk Filatures Ltd.,

P--31/24-5-1944. Letter from Mr.A.Khaleeli, Director of Industries and Commerce, Madras-to the Mandging- Director of the Kollegal Silk

P--32/8-6-1944. Letter from the Director General of Supply to the Plaintiff.

P--33 to P-33(c) Production books of the Kollegal Silk Filatures Ltd

P--34/ Att-endance register of the Kollegal Silk Filatures Ltd.,
P --35/- -do-

P--36/ Muster rolls No.1 produced by the Respondent.
P--37/ -Do- 2 -do-
P-38/ -do- 3 -do-
P--39/ Out put register produced by the respondent,

P--40/ File containing weekly reports to Government from the Kollegal Silk Filatures.

P--41/28--11-1944. The sixth annual report of the Kollegal Silk Filatures Ltd.,

For defendant.

D--1 / 30 -3-1943. Notifice of acquisition of the properties of the Silk Filatures Ltd., by the Government of Madras.

D--2/13- 4-1943. Letter by Mr.P.R.Srinivasan advocate for the Chairm Board of Directors, the Kollegal Silk Filature Ltd., to the Director of Industries and commerce Madras, acknowledging receipt of Ex. D -1

D--3/12-11-1937. Copy of Prospectus of the Kollegal Silk Filatures Ltd., Kollegal,

D..4/20- -11--1942. Copy of letter by the Sericultural Expert and Government Director of the Kollegal Silk Filatures Ltd., to the Direc-tor General of Supply Textile Directorate, New Delhi.

D-5/20-2-1943. Letter by Government Director the Kollegal Silk Filat ures Ltd., to the Director General of Supplies Textile Directorate, New Delhi enclosing statement of costs of cocoons and the cost of silk s-upplies so far at the enhanced rate.

D.6/2-1 1-1941. The third annual report for the year ending 30-6-1941 for the Kollegal silk Filatures Ltd.,

D-6(a)/10-5-1939. The first annual report for the year ending 30-4-1939 for the Kollegal Silk Filatures Ltd.,

D-6b/8- 7-1940. The second annual report for the year ending 30-4-194 for the Kollegal Sil k Filatu res Ltd.,

D-6c/2-12-1943. The fifth annual report for year ending -30-6-1943 fo the Kollegal Silk Filatures Ltd.,

D-6 d/5-2-1943. The fourth annual report for the year ending 30-6-194 for the Kollegal Silk Filatures Ltd.

Witness examined.

For plaintiff. For defendant.
1. K. T.Achaya. 2. M.S.Ganesaiyer. 1. R.Peychaud.

(sd) S.P.Thompson. Dt.Judge.

True copy

Superintendent.

SECRETARY TO GOVERNMENT
18 JUN 1946
DEVELOPMENT DEPARTMENT

MEMORANDUM.

Presented to
The Government of Madras.

UNDER SECRETARY
18 JUN 1946
DEVELOPMENT DEPARTMENT

This Memorandum is presented by the KOLLEGAL SILK FILATURES LIMITED.

Prayer.

The prayer of the Company is that its premises, buildings, Plant and Machinery be returned to it and it be allowed to resume its manufacturex of silk.

History.

The Company was started in 1937-1938. The Government encouraged the venture by taking ten per cent of the 17,500 Ordin Shares of Rs.10/- each and of the 3500 Deferred Shares of Rs.1/- ea contributing Rs.17,850/- in all. It was a condition that one Dire appointed by the Government should be on the management of the Company. The first Government Director was Mr. Green, the Direct of Industries, and the next was Mr. K.T. Achaiya, Sericultural Expert, Kollegal. He was for a time Managing Director with the permission of the Government. Mr. Achaiya resigned the Managing Directorship on the 24th February, 1943.

On the 12th March, 1943, the Government requisitioned the Silk Filatures Limited.

On the 30th March, 1943, they gave notice of acquisition.

On the 5th June, 1943, the Company sent in a Memo objecting to the acquisition and stating that if they must requisition for war purposes it may be returned to the Company six months after the end of the war. (Vide I enclosed).

The Government, however, persisted in acquiring the busines and fixed the compensation at Rs.80,970/-. They remitted the amou and it was received under protest, without prejudice to their leg rights on the 10th July 1943.

The Government appointed Mr. C.Satyanarayana Chowdri, B.A., District Judge of Coimbatore, as Arbitrator to fix the compensati

When the matter was called up for trial in June 1944, the Company took an adjournment to enable it to test the legality of acquisition and subsequently instituted a suit in January 1945

(O.S.2/45) for the purpose. This suit was decided against the Company by Mr.Thompson, the District Judge of Coimbatore, on lovember 26, 1945.

The Arbitrator disallowed the claim to higher compensation.)n the 22nd September 1945. He gave the mere book value of that late ignoring its actual value at the time. As for example a)asin received compensation at Rs.233/- the inferior basin locally lade and added cost the Government over Rs.465/

The copy of the Arbitrator's judgment has been given to the he Company on 6-4-1946. The copy of the District Judge's judgmer - O.S.2/45 has not yet been furnished.

Question of Policy.

e Company would naturally prefer to settle matters with the overnment instead of resorting to prolonged proceedings in the High ourt, Federal Court and Privy Council.

If the matter must go further it must be by appeal to the High ourt in both cases and to the present Government it should be a matt largely of policy not one of trying legal conclusions in Courts.

This is not a Heavy or Basic industry to be taken up by the overnment exclusively. The old orthodox rule about Government not arrying on competing business is still applicable to the silk anufacturing Industry. Even socialisation recognises the preference n many cases of Government Control of Industries run by individuals ver direct assumption of management under state ownership.

The Company, therefore, appeals to the Government for orders lat the business undertaking with the premises, building, plant d machinery be returned to the Company so as to enable it to carry the business itself subject to the original condition of a overnment nominee director being on the Board of Management. The mpany may add that it is willing to work the Concern subject to any asonable conditions the Government may see fit to impose. The vernment have added to equipment but at the same time have enjoyed l the profits made during and after the war upto-date.

LAW.

Though law is only a secondary consideration it is still worth

stating ~~xxxxxx~~ shortly the point~~x~~ raised in order to enable the Government (particularly because it is a popular Government with a new outlook) to see whether it is worth while spending time and trouble and money in litigation over a simple matter not beyond laymen's comprehension.

In the Defence of India Act,

S. 1 provides that the Act is to remain in force for the duration of the war and six months thereafter

S. 2 directs the framing of the Rules and the objects aimed at are stated to be

defence of British India
public safety
public order
efficient prosecution of the war
supplies and services essential to the life of the community

S. 16 says that any authority or person acting in ~~xxxxxx~~ pursuance of the Act should interfere with the enjoyment of property as little as may be consistent with the purpose of ensuring public safety and interest and the defence of British India.

The Rules are framed in pursuance of these ideas in the Act.

In the Defence of India Rules there is provision for acquiring movables and immovables of owners for war purposes (75A). There is also provision for dealing with "undertakings (81) Rule 81 refers to the purposes for which each order may be made as to undertakings. The Lahore High Court held that an Electric Company cannot be acquired under Rule 75A but can only be dealt with under 81 that is regulated controlled officers lent but business not acquired. The decision and the language of the Rules are alike clear. A later case of the Calcutta High Court is cited by the District Judge as differing from this view. That was a case of a hotel-keeper's house being requisitioned. It will be noted that it was Requisitioning, not Acquiring. Secondly, the business or undertaking was not requisitioned but a house which had been in part requisitioned even before. The hotel can go on in another house. Whatever difficulty the owner may have to find another house, it cannot be said that his right to conduct the business had been acquired.

Here it is not an individual's property that has been acquir It is a Company's. It is not a hotel which can be conducted any where. The Mill and its business being taken away, it cannot be

said that the Company may conduct its silk manufacture in another place without the machinery taken away from it. Gentle J definitely says that the right to conduct a hotel was not taken away, while here the business of silk manufacture is clearly taken away when the Mills are taken away. The Calcutta case says that at the end of the war the premises will come back and the business (which had at no time been taken away) might be again conducted in it. The Calcutta Case is not against the claim. In so far as it is any authority it would seem to be in favour of the Company rathe than against it.

The Act provides for the least disturbance possible being made in the ownership of the property and for a return of property in six months.

This acquisition, if one may say so without disrespect, is an unauthorised and wanton deprivation of private property for no public purpose.

It is for these reasons that it is prayed that the Company be allowed to continue its business of Silk Manufacture.

Enclosure No I.

THE KOLLEGAL SILK FILATURES, LIMITED.

Memorandum of the Board of Directors dated 5th June 43.

The valuation has generally proceeded not on the present market rates of materials and buildings and it is not clear to the Board on what basis exactly the valuation has been made.

Lands. Land has been valued by the Director of Industries at Rs.3000/-. This apparently does not take into account the value of wells on the premises and their fittings. Inclusive of these two items the value of the land amounts to Rs.7265/- according to the last Balance Sheet which is in the Board's opinion fair and reasonable. Even this figure relates to the prewar period when lands and wells were much cheaper. Unlike the sites purchased by Government for their Filature, the lands in question are situated opposite the influential and rich village of Mudigondan. Besides, they have acquired an additional value due to the fact that a factory has sprung up on it and has been in working order for some years. They were not a piece of waste land hereafter to be developed into a Factory site.

Buildings. The value adopted by the Director of Industries is Rs.28,500/- while the value according to our last Balance Sheet is Rs.30,185/-. This valuation has proceeded on the basis of the prewar prices of materials and labour but the present rates are more than double the former rates. The plynth area of the buildings on the site is about 17,000 sq.feet, valuing at Rs.3/- per sq.ft., the amount works out to Rs.51,000/-. The Board understands that the rates now allowed by Government in respect of the new Filature are very much higher despite the fact that the materials used are country wood and country wooden frames and roods. The Board considers that Rs.50,000/- would be a fair valuation for the buildings.

Basins. 150 basins cost the Concern about Rs.39,750/-, allowing for depreciation at 5% per year for the last four years the value of the basins amounts to Rs.32,000/-. This valuation is very modest having regard to the fact that all the basins

have not fully worked during the period and do not admit of full depreciation. Besides, there was some delay in the recei and fitting up of the additional basins and all the basins have never been at work simultaneously. However, the Board has not made any deduction on the annual depreciation on this account.

The value set by the Director on the basins Rs.17,375 falls very much short of their real value.

It has also to be mentioned that the basins in questi are of copper and aluminium unlike the stoneware basins now indented upon by Government for their new Filatures.

The present market value of the basins of the Italian type is at least Rs.500/- per basin, at this rate the value of 150 basins amounts to Rs.75,000/-. It has to be remembered that metallic basins are not the same as stoneware basins as they are meant to last for 60 years.

Plant and other equipment:- The figure adopted by the Director is Rs.10,125/-. This figure has at least to be doubled considerir the present value of plant and machinery.

Items not provided for by the Director.

The cost of trained labour. The Government have taken over the Factory as a going concern. But the Director has not allowed any compensation for the cost incurred in training the staff and labour. Government themselves offered Rs.60/- per basin to cover the cost of training. At this rate, this item works out to Rs.9000/-. The Mysore Filatures have claimed Rs.125/- per basin on this account. This would amount to Rs. 18,750/-. The Board urges that Rs.15,000/- would be a fair valuation of the trained labour and staff.

Preliminary expenses, brokerage and commission. The Concern has spent a sum of Rs.7298/-. Since Government have acquiree this concern compulsorily under the Defence of India Rules, 15% addition over and above the value has to be awarded for compulsorily nature of the acquisition on the anology of t

acquisitions effected under the Land Acquisition Act. The Board would urge upon Government the addition of this percentage.

To sum up, the Company claims a compensation of Rs.1,92,642/- as detailed below:-

Interest. Provision has also to be made for payment of interest on the total value of Rs.1,92,642/- to be paid to the Company at 6% from the date Government took over the Factory - namely 16th March 1943 up to the date of actual payment.

The Board was under the impression that the Kollegal Silk Filatures would be taken over by Government for the duration of the war and that the Factory would be restored to the Company when the hostilities cease. As an alternative Government may work the Concern to meet the present need and restore it to the Company when it no longer needed, the Company being paid reasonable compensation during the period to be distributed among the share-holders so that the Company may be kept alive and restored to status qua ante when the need for Government working the Concern ceases to exist.

Sd/- T. Raghavaiya
Chairman.

(true copy)

Details of Compensation demanded:-

1. Land and Wells thereon with their fittings	Rs. 7, 265- 0- 0
2. Buildings	50, 000- 0- 0
3. Basins	75, 000- 0- 0
4. Plant and other equipment	20, 250- 0- 0
5. Cost of trained labour	15,000-- 0- 0
6. and 15% for compulsory acquisition	25, 127- 0- 0
	1,92, 642- 0- 0

(true copy)

T.R.VENKATARAMA SASTRI.

"KAUSTUBHA"
Edward Elliot Road.
Mylapore, Madras.
16-3-1944.

O P I N I O N A

I am of opnion that it is not competent to the Government to acquire the Mysore Silk Filatures Ltd., under Rule 75-A of the Defence of India Rules. The Company is an industrial undertaking and is not either moveable or immoveable property within the meaning of Rule 75-A. The moveable or immoveable property referred to in Rule 75-A is property unconnected with any undertaking. Rule 81 is the only rule that is applicable to undertakings and there is no provision for their acquisition. Moveabl and immoveable property which are part of an undertaking are not subject to the acquisition under Rule 75-A. Undertakings can only be taken control over during wartime and six months thereafter as provided for in the Defence of India Act Section 1, and must be returned to the company at the expiration of that period.

(Sd) T.R.V.SASTR

Analysis of the purposes for which the Defence of India Act was passed.

-:-

The purposesare to be fulfilled by the making of rules and section 2 of straightaway plunges into it.

The rules are such as are necessary or expedient

(1) for securing the defence of British India,

(2) for securing the public safety,

(3) for the maintenance of public order,

(4) for securing the efficient prosecution of the war,

(5) for maintaining supplies and services essential to the life of the community.

Rule 81 (2) repeats purposes nos. (1),(4) & (5).

Rule 81 (3) repeats the same three purposes.

A silk industrial undertaking may bear on purposes nos. (1) & (4); it is hardly likely to be related to supplies and services <u>essential</u> to the life of the community.

If the silk has to be of a particular quality, the government may direct th- --oduction of silk of that quality, 81 (2) (a): 81 (2) (c) (i,.

the government may prohibit its disposal; 81 (2) (a)

the government may direct the silk to be sold to specific rsons in specified circumstances 81 (2) (a)

may control the prices 81 (2) (b);

and if the company is unable to produce unassisted the quality of the article required, the government may give any direction from the imposition of advisers to the complete control over the business and processes which the business employs for production.

If ultimately silk of the required quality is produced and supplied to the government, the government have all that they can ask of this undertaking for the purposes (1) & (4) to be served by this industry.

There may be other undertakings serving purpose no.(5). In those cases also the same control may be exercised by the government. It will also be noticed that 81 (2) (aa) (ab) (bb) (bc) are all connected with purpose no. (5). And throughout rule 81 change of ownership is not contemplated. On the other hand continuance of the ownership undisturbed except by control is implied in every case.

(Sd) T.R.V.SASTR..

O P I N I O N. C

Re: Notice of acquisition--The Kollegal Silk Filatures Ltd.

I gave my opinion in short for circulation to the shareholders in accordance with their desire as expressed in their resolution at their last meeting. I now proceed to state it in more detail.

The above company of silk manufacturers is an industrial undertaking within the Defence of India Rules. The company owns immoveable property (the business premises) and also moveable properties required for the purpose of carrying on

their business. Silk of a certain texture and quality is required for the making of parachutes. The Government found the silk not up to quality for the purpose. Their first suggestion therefore was that the company should take the assistance of the Government Expert Mr. Peychaud. While the company was taking steps to comply with the requirements of the government, the government sent a requisition order dated March 12, 1943, purporting to act under rule 75-A. It ran as follows:

> "Whereas in the opinion of the Government of Madras it is expedient for the efficient prosecution of the war to requisition the properties hereinafter specified:
>
> "Now therefore, in exercise of the powers conferred by rule 75-A of the Defence of India Rules, His Excellency the Governor of Madras is hereby pleased to requisition with effect on and from the date of the service of this order the moveable and immoveable properties specified in the schedule below and belonging to the Company known as the Kollegal Silk Filatures Limited, Kollegal and to direct the said company or other persons in possession of the said properties to deliver the same to the Sericultural Expert, Kollegal, or to any person authorised by the said Sericultural Expert to take possession of the properties and in the meantime not to dispose of the properties or any part thereof in any manner without the permission of the Government of Madras".

The order was carried out by the Government taking over possession of the company's business. Then on March 30, 1943, the Government issued a further order in these terms:-

> "Whereas by G.O.No. 311 Development dated 12th March 1943 the properties of the Kollegal Silk Filatures Ltd. specified in the Schedule hereto annexed have been requisitioned by the Government of Madras;
>
> "Now therefore, in pursuance of sub-rule (2) of rule 75-A of the Defence of India Rules notice is hereby given that the Government of Madras have decided to acquire the said properties in pursuance of the said rule".

The question referred to me is whether the Government are entitled to ACQUIRE the concern. I AM OF OPINION THAT IT IS NOT COMPETENT TO ACQUIRE THE BUSINESS OF THE COMPANY.

The material legal provisions are set down below.

Defence of India Act section 1 says that the Act is to be in force during the continuance of the present war and for a eriod of six months thereafter (sub-S(4)).

(P.T.O)

Section 2 gives power to the Central Government to make rules " as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community."

Acquisition of property is not among the particular clauses apart from the general power expressed in the words above cited from section 2. The only words to which reference might be made for such power are the words in sub-section (3) of section (2) which in (viii) says

> "empower or direct any authority to take such action as may specified in the rules or as may seem necessary to such authority for the purpose of ensuring the public safety or interest or the Defence of British India".

These words are too general and cannot include acquisition of property when full control during war time is sufficient for all purposes connected with the efficient prosecution of the war. It should be noted that section 15 lays down that enjoyment of property should be interfered with as little as possible.

It has been suggested that the enpowering of acquisition by the Government is ultra vires, being outside the scope of the Act. Acquisition of property is in certain circumstances authorised by the existing law. If other acquisitions are intended to be authorised, it should be by legislation. If the Act does not empower it, the rules cannot authorise it. I shall however proceed as if the rules could authorise acquisition. I have come to the conclusion that the rules have not authorised the acquisition of a company's industrial undertaking.

Rule 75-A is headed "Requisitioning of property"

Rule 81, is headed "General control of industry.

These two matters are dealt with under different rules and in different ways. The property of an industry cannot be taken over as so to stop the industry going on. If it touches the industry, it cannot be dealt with otherwise than under rule 81. The company may possess houses, lands etc., unconnected with,

or separable from the business carried on. A company may own property just like any private owner. While rule 75-A may deal with moveable and immoveble property without touching the undertaking, it cannot acquire the undertaking itself. This is a company. There are shareholders. The government are compulsorily acquiring the company, that is, the shares of each shareholder, and thereby in effect dissolving the company. How can the government do that without legislative authority ? Rule 75-A authorises requisitioning of property moveable or immoveable and the user of it and the dealing with it in such manner as may appear to it to be expedient, and "may acquire it".

Even in the case of property unconnected with the industry of a company, why is acquisition necessary ? Is not complete control sufficient for all purposes intended to be promoted by the Act ? If the Act does not authorise acquisition, it is because such acquisition is not necessary; and section 15 so states it. Therefore rule 75-A, in so far as it authorises acquisition, goes beyond the intendment of the Act and is ultra vires - is the attack upon it. Whether this is right or not, it is enough to say that if a company's business undertaking is to be acquired, you must find it in Rule 81. Rule 75-A cannot apply to industry.

If the rules provide for the acquisition of property moveable or immoveable but does not provide for it in the case of an industrial undertaking, the conclusion is obvious that an undertaking or its business cannot be acquired nor the business put an end to by the acquisition.

The matter has been the subject of a decision of a Full Bench of the Lahore High Court, reported in Indian Law Reports (1943) Lahore 610. It is a sound decision. I have stated the rules bearing on the subject and the conclusion to be drawn independently of the decision, because courts may and do differ in their conclusions. In this case the

matter is so clear that it would be surprising if the government persisted in acquiring the undertaking.

Rule 81 gives to the Government every form of control necessary for the primary purpose of the Act. A full owner's control is available during war time. The government pay for use of full control and possession.

Without taking possession, control over production and distribution is given to the government by rule 81 (2) and rule 81 (3) imposes no limit to the kind of control that the government may exercise for the purposes of the Act referred to in section 2 (1) and repeated twice in rule 81 in sub rule (2) and sub rule (3). Both these sub rules throughout imply the continuing ownership of the undertaking by the company, thereby impliedly negativing the right of the government to acquire the business and thereby destroying the company. Short of an out-and-out purchase there is no control that the government may require over the business or its produce for war time purposes that is not given by rule 81.

The result is that rule 75-A may be ultra vires in so far as it enables acquisition of property moveable or immoveable. But in so far as an industrial undertaking is concerned it falls outside rule 75-A and must be brought under only rule 81 which does not authorise the acquisition of an undertaking.

(Sd) T.R.V.SASTRI.

T-14-1 2 3 6146
44252

MEMORANDUM

Public

Presented to
The Government of Madras.

ASSISTANT SECRETARY TO GOVT. 28 JUN 1946

This Memorandum is presented by the KOLLEGAL SILK FILATURES LIMITED.

Chief Secy

Revenue AR 28.6.46

Prayer.

The prayer of the Company is that its premises, buildings, Plant and Machinery be returned to it and it be allowed to resume its manufacturex of silk.

History.

The Company was started in 1937-1938. The Government encouraged the venture by taking ten per cent of the 17,500 Ordinary Shares of Rs.10/- each and of the 3500 Deferred Shares of Rs.1/- each, contributing Rs.17,850/- in all. It was a condition that one Director appointed by the Government should be on the management of the Company. The first Government Director was Mr. Green, the Director of Industries, and the next was Mr. K.T. Achaiya, Sericultural Expert, Kollegal. He was for a time Managing Director with the permission of the Government. Mr. Achaiya resigned the Managing Directorship on the 24th February, 1943.

On the 12th March, 1943, the Government requisitioned the Silk Filatures Limited.

On the 30th March, 1943, they gave notice of acquisition.

On the 5th June, 1943, the Company sent in a Memo objecting to the acquisition and stating that if they must requisition for war purposes it may be returned to the Company six months after the end of the war. (Vide I enclosed).

The Government, however, persisted in acquiring the business and fixed the compensation at Rs.80,970/-. They remitted the amount and it was received under protest. without prejudice to their leg rights on the 10th July 1943.

The Government appointed Mr. C.Satyanarayana Chowdri, B.A., B.L District Judge of Coimbatore, as Arbitrator to fix the compensation.

When the matter was taken up for trial in June 1944, the Company took an adjournment to enable it to test the legality of acquisition and subsequently instituted a suit in January 1945

O.S.2/45) for the purpose. This suit was decided against the Company by Mr. Thompson, the District Judge of Coimbatore, on November 26, 1945.

The Arbitrator disallowed the claim to higher compensation on the 22nd September 1945. He gave the mere book value of that date ignoring its actual value at the time. As for example a basin received compensation at Rs.233/- the inferior basin locally made and added cost the Government over Rs.465/-.

The copy of the Arbitrator's judgment has been given to the Company on 6-4-1946. The copy of the District Judge's judgment in O.S.2/45 has not yet been furnished.

Question of Policy.

The Company would naturally prefer to settle matters with the Government instead of resorting to prolonged proceedings in the High Court, Federal Court and Privy Council.

If the matter must go further it must be by appeal to the High Court in both cases and to the present Government it should be a matte largely of policy not one of trying legal conclusions in Courts.

This is not a Heavy or Basic industry to be taken up by the Government exclusively. The old orthodox rule about Government not carrying on competing business is still applicable to the silk manufacturing Industry. Even socialisation recognises the preference in many cases of Government control of Industries run by individuals over direct assumption of management under state ownership.

The Company, therefore, appeals to the Government for orders that the business undertaking with the premises, building, plant and machinery be returned to the Company so as to enable it to carry on the business itself subject to the original condition of a Government nominee director being on the Board of Management. The Company may add that it is willing to work the Concern subject to any reasonable conditions the Government may see fit to impose. The Government have added to equipment but at the same time have enjoyed all the profits made during and after the war upto-date.

LAW.

Though law is only a secondary consideration it is still worth

stating shortly the points raised in order to enable the Government (particularly because it is a popular Government with a new outlook) to see whether it is worth while spending time and trouble and money in litigation over a simple matter not beyond laymen's comprehension.

In the Defence of India Act,

S. 1 provides that the Act is to remain in force for the duration of the war and six months thereafter

S. 2 directs the framing of the Rules and the objects aimed at are stated to be

defence of British India
public safety
public order
efficient prosecution of the war
supplies and services essential to the life of the community

S. 16 says that any authority or person acting in pursuance of the Act should interfere with the enjoyment of property as little as may be consistent with the purpose of ensuring public safety and interest and the defence of British India

(The Rules are framed in pursuance of these ideas in the Act.)

In the Defence of India Rules there is provision for acquiring movables and immovables of owners for war purposes (75A). There is also provision for dealing with "undertakings (81) Rule 81 refers to the purposes for which each order may be made as to undertakings. The Lahore High Court held that an Electric Company cannot be acquired under Rule 75A but can only be dealt with under 81 that is regulated controlled officers lent but business not acquired. The decision and the language of the Rules are alike clear. A later case of the Calcutta High Court is cited by the District Judge as differing from this view. The was a case of a hotel-keeper's house being requisitioned. It will be noted that it was Requisitioning not Acquiring. Secondly, the business or undertaking was not requisitioned but a house which had been in part requisitioned even before. The hotel can go on in another house. Whatever difficulty the owner may have to find another house, it cannot be said that his right to conduct the business had been ac ed.

Here it is not an individual's property that has been acquired. It is a Company's. It is not a hotel which can be conducted any where. The Mill and its business being taken away, it cannot be

said that the Company may conduct its silk manufacture in another place without the machinery taken away from it. Gentle J definitely says that the right to conduct a hotel was not taken away, while here the business of silk manufacture is clearly taken away when the Mills are taken away. The Calcutta case says that at the end of the war the premises will come back and the business (which had at no time been taken away) might be again conducted in it. The Calcutta Case is not against the claim. In so far as it is any authority it would seem to be in favour of the Company rath than against it.

The Act provides for the least disturbance possible being made in the ownership of the property and for a return of property in six months.

This acquisition, if one may say so without disrespect, is an unauthorised and wanton deprivation of private property for no public purpose.

It is for these reasons that it is prayed that the Company be allowed to continue its business of Silk Manufacture.

Enclosure 1

THE KOLLEGAL SILK FILATURES, LIMITED.

Memorandum of the Board of Directors dated 5th June 43.

The valuation has generally proceeded not on the present market rates of materials and buildings and it is not clear to the Board on what basis exactly the valuation has been made.

Lands. Land has been valued by the Director of Industries at Rs.3000/-. This apparently does not take into account the value of wells on the premises and their fittings. Inclusive of these two items the value of the land amounts to Rs.7265/- according to the last Balance Sheet which is in the Board's opinion fair and reasonable. Even this figure relates to the prewar period when lands and wells were much cheaper. Unlike the sites purchased by Government for their Filature, the lands in question are situated opposite the influential and rich village of Mudigondan. Besides, they have acquired an additional value due to the fact that a Factory has sprung up on it and has been in working order for some years. They were not a piece of waste land hereafter to be developed into a Factory site.

Buildings. The value adopted by the Director of Industries is Rs.28,500/- while the value according to our last Balance Sheet is Rs.30,185/-. This valuation has proceeded on the basis of the prewar prices of materials and labour but the present rates are more than double the former rates. The plynth area of the buildings on the site is about 17,000 sq.feet, valuing at Rs.3/- per sq.ft., the amount works out to Rs.51,000/-. The Board understands that the rates now allowed by Government in respect of the new Filature are very much higher despite the fact that the materials used are country wood and country wooden frames and rods. The Board considers that Rs.50,000/- would be a fair valuation for the buildings.

Basins. 150 basins cost the Concern about Rs.39,750/-, allowing for depreciation at 5% per year for the last four years the value of the basins amounts to Rs.32,000/-. This valuation is very much modest having regard to the fact that all the basins

have not fully worked during the period and do not admit of ...l depreciation. Besides, there was some delay in the recei and fitting up of the additional basins and all the basins have never been at work simultaneously. However, the Board has not made any deduction on the annual depreciation on this account.

The value set by the Director on the basins Rs.17,375/- falls very much short of their real value.

It has also to be mentioned that the basins in question are of copper and aluminium unlike the stoneware basins now indented upon by Government for their new Filatures.

The present market value of the basins of the Italian type is at least Rs.500/- per basin, at this rate the value of 150 basins amounts to Rs.75,000/-. It has to be remembered that metallic basins are not the same as stoneware basins as they are meant to last for 60 years.

Plant and other equipment:- The figure adopted by the Director is Rs.10,125/-. This figure has at least to be doubled considering the present value of plant and machinery.

Items not provided for by the Director.

The cost of trained labour. The Government have taken over the Factory as a going concern. But the Director has not allowed any compensation for the cost incurred in training the staff and labour. Government themselves offered Rs.60/- per basin to cover the cost of training. At this rate, this item works out to Rs.9000/-. The Mysore Filatures have claimed Rs.125/- per basin on this account. This would amount to Rs. 18,750/-. The Board urges that Rs.15,000/- would be a fair valuation of the trained labour and staff.

Preliminary expenses, brokerage and commission. The Concern has spent a sum of Rs.7298/-. Since Government have acquiree this concern compulsorily under the Defence of India Rules, 15% addition over and above the value has to be awarded for this compulsorily nature of the acquisition on the anology of the

acquisitions effected under the Land Acquisition Act. The Board would urge upon Government the addition of this percentage.

To sum up, the Company claims a compensation of Rs.1,92,642/- as detailed below:-

Interest. Provision has also to be made for payment of interest on the total value of Rs.1,92,642/- to be paid to the Company at 6% from the date Government took over the Factory - namely 16th March 1943 up to the date of actual payment.

The Board was under the impression that the Kollegal Silk Filatures would be taken over by Government for the duration of the war and that the Factory would be restored to the Company when the hostilities cease. As an alternative Government may work the Concern to meet the present need and restore it to the Company when it no longer needed, the Company being paid reasonable compensation during the period to be distributed among the share-holders so that the Company may be kept alive and restored to status qua ante when the need for Government working the Concern ceases to exist.

Sd/- T. Raghavaiya

Chairman.

'(true copy,

Details of Compensation demanded:-

1. Land and Wells thereon with their fittings	Rs. 7, 265- 0- 0
2. Buildings	50, 000- 0- 0
3. Basins	75, 000- 0- 0
4. Plant and other equipment	20, 250- 0- 0
5. Cost of trained labour	15,000-- 0- 0
6. and 15% for compulsory acquisition	25, 127- 0- 0
	1,92, 642- 0- 0

(true copy)

T.R.VENKATARAMA SASTRI.

"KAUSTUBHA"
Edward Elliot Road.
Mylapore, Madras.
16-3-1944.

O P I N I O N A

I am of opnion that it is not competent to the Government to acquire the Mysore Silk Filatures Ltd., under Rule 75-A of the Defence of India Rules. The Company is an industrial undertaking and is not either moveable or immoveable property within the meaning of Rule 75-A. The moveable or immoveable property referred to in Rule 75-A is property unconnected with any undertaking. Rule 81 is the only rule that is applicable to undertakings and there is no provision for their acquisition. Moveable and immoveable property which are part of an undertaking are not subject to the acquisition under Rule 75-A. Undertakings can only be taken control over during wartime and six months thereafter as provided for in the Defence of India Act Section 1, and must be returned to the company at the expiration of that period.

(Sd) T.R.V.SASTRI.

Analysis of the purposes for which the Defence of India Act was passed. B

-:-

The purposes are to be fulfilled by the making of rules and section 2 of straightaway plunges into it.

The rules are such as are necessary or expedient

(1) for securing the defence of British India,

(2) for securing the public safety,

(3) for the maintenance of public order,

(4) for securing the efficient prosecution of the war,

(5) for maintaining supplies and services essential to the life of the community.

Rule 81 (2) repeats purposes nos. (1),(4) & (5).

Rule 81 (3) repeats the same three purposes.

A silk industrial undertaking may bear on purposes nos. (1) & (4); it is hardly likely to be related to supplies and services essential to the life of the community.

(P.T.O)

If the silk has to be of a particular quality, the governme may direct the production of silk of that quality, 81 (2) (a): 81 (2) (c) (i).

ıe government may prohibit its disposal; 81 (2) (a)

ıe government may direct the silk to be sold to specific persons in specified circumstanc (2) (a)

may control the prices 81 (2) (b);

and if the company is unable to p: nassisted the quality of the article required, the government may give any direction from the imposition of advisers to the complete control over the business and processes which the business employs for production.

If ultimately silk of the required quality is produced and supplied to the government. the government have all that they can ask of this undertaking for the purposes (1) & (4) to be served by this industry.

There may be other undertakings serving purpose no.(5). In those cases also the same control may be exercised by the government. It will also be noticed that 81 (2) (aa) (ab) (bb) (bc) are all connected with purpose no. (5). And throughout rule 81 change of ownership is not contemplated. On the other hand continuance of the ownership undisturbed except by control is implied in every case.

(Sd) T.R.V.SASTRI.

O P I N I O N. C'

Re: Notice of acquisition--The Kollegal Silk Filatures Ltd.

I gave my opinion in short for circulation to the shareholders in accordance with their desire as expressed in their resolution at their last meeting. I now proceed to state it in more detail.

The above company of silk manufacturers is an industrial undertaking within the Defence of India Rules. The company owns immoveable property (the business premises) and also moveable properties required for the purpose of carrying on

their business. Silk of a certain texture and quality is requi for the making of parachutes. The Government found the silk not up to quality for the purpose. Their first suggestion therefore was that the company should take the assistance of the Government Expert Mr. Peychaud. While the company was taking steps to comply with the requirements of the government, the government sent a requisition order dated March 12, 1943, purporting to act under rule 75-A. It ran as follows:

> "Whereas in the opinion of the Government of Madras it is expedient for the efficient prosecution of the war to requisition the properties hereinafter specified:
>
> "Now therefore, in exercise of the powers conferred by rule 75-A of the Defence of India Rules; His Excellency the Governor of Madras is hereby pleased to requisition with effect on and from the date of the service of this order the moveable and immoveable properties specified in the schedule below and belonging to the Company know.. as the Kollegal Silk Filatures Limited, Kollegal and to direct the said company or other persons in possession of the said properties to deliver the same to the Sericultural Expert, Kollegal, or to any person authorised by the said Sericultural Expert to take possession of the properties and in the meantime not to dispose of the properties or any part thereof in any manner without the permission of the Government of Madras".

The order was carried out by the Government taking over ssion of the company's business. Then on March 30, 1943, the Government issued a further order in these terms:-

> "Whereas by G.O.No. 311 Development dated 12th March 1943 the properties of the Kollegal Silk Filatures Ltd. specified in the Schedule hereto annexed have been requisitioned by the Government of Madras;
>
> "Now therefore, in pursuance of sub-rule (2) of rule 75-A of the Defence of India Rules notice is hereby given that the Government of Madras have decided to acquire the said properties in pursuance of the said rule

The question referred to me is whether the Government are entitled to ACQUIRE the concern. I AM OF OPINION THAT IT IS NOT COMPETENT TO ACQUIRE THE BUSINESS OF THE COMPANY.

The material legal provisions are set down below.

Defence of India Act section 1 says that the Act is to be in force during the continuance of the present war and for a period of six months thereafter (sub-S(4)).

Section 2 gives power to the Central Government to make rules " as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community."

Acquisition of property is not among the particular clause apart from the general power expressed in the words above cited from section 2. The only words to which reference might be made for such power are the words in sub-section (3) of section (2) which in (viii) says

> "empower or direct any authority to take such action as ay specified in the rules or as may seem necessary to uch authority for the purpose of ensuring the public afety or interest or the Defence of British India".

These words are too general and cannot include acquisition of property when full control during war time is sufficient for all purposes connected with the efficient prosecution of the war. It should be noted that section 15 lays down that enjoyment of property should be interfered with as little as possible.

It has been suggested that the enpowering of acquisition by the Government is ultra vires, being outside the scope of the Act. Acquisition of property is in certain circumstances authorised by the existing law. If other acquisitions are intended to be authorised, it should be by legislation. If the Act does not empower it, the rules cannot authorise it. I shall however proceed as if the rules could authorise acquisition I have come to the conclusion that the rules have not authorised the acquisition of a company's industrial undertaking.

Rule 75-A is headed "Requisitioning of property"

Rule 81, is headed "General control of industry.

These two matters are dealt with under different rules and in different ways. The property of an industry cannot be taken over as so to stop the industry going on. If it touches the industry, it cannot be dealt with otherwise than under rule 81. The company may possess houses, lands etc., unconnected with,

or separable from, the business carried on. A company may own property just like any private owner. While rule 75-A may deal with moveable and immoveble property without touching the undertaking, it cannot acquire the undertaking itself. [illegible] is a company. There are shareholders. The government are compulsorily acquiring the company, that is, the shares of each shareholder, and thereby in effect dissolving the company. How can the government do that without legislative authority ? Rule 75-A authorises requisitioning of property moveable or immoveable and the user of it and the dealing with it in such manner as may appear to it to be expedient, and "may acquire it".

Even in the case of property unconnected with the industry of a company, why is acquisition necessary ? Is not complete control sufficient for all purposes intended to be promoted by the Act ? If the Act does not authorise acquisition, it is because such acquisition is not necessary; and section 15 so states it. Therefore rule 75-A, in so far as it authorises acquisition, goes beyond the intendment of the Act and is ultra vires - is the attack upon it. Whether this is right or not, it is enough to say that if a company's business undertaking is to be acquired, you must find it in Rule 81. Rule 75-A cannot apply to industry.

If the rules provide for the acquisition of property moveable or immoveable but does not provide for it in the case of an industrial undertaking, the conclusion is obvious that an undertaking or its business cannot be acquired nor the business put an end to by the acquisition.

The matter has been the subject of a decision of a Full Bench of the Lahore High Court, reported in Indian Law Reports (1943) Lahore 610. It is a sound decision. I have stated the rules bearing on the subject and the conclusion to be drawn independently of the decision, because courts may and do differ in their conclusions. In this case the

matter is so clear that it would be surprising if the government persisted in acquiring the undertaking.

Rule 81 gives to the Government every form of control necessary for the primary purpose of the Act. A full owner's control is available during war time. The government pay for use of full control and possession.

Without taking possession, control over production and distribution is given to the government by rule 81 (2) and rule 81 (3) imposes no limit to the kind of control that the goyernment may exercise for the purposes of the Act referred to in section 2 (1) and repeated twice in rule 81 in sub rule (2) and sub rule (3). Both these sub rules throughout imply the continuing ownership of the undertaking by the company, thereby impliedly negativing the right of the government to acquire the business and thereby destroying the company. Short of an out-and-out purchase there is no control that the governmen may require over the business or its produce for war time purposes that is not given by rule 81.

The result is that rule 75-A may be ultra vires in so far as it enables acquisition of property moveable or immoveable. But in so far as an industrial undertaking is concerned it falls outside rule 75-A and must be brought under only rule 81 which does not authorise the acquisition of an undertaking.

(Sd) T.R.V.SASTRI.

K. RAGHAVACHARI
MERCHANT

PHONE : 1191
310-11, LINGHI CHETTY ST.
(First Floor)

Madras, 26th Aug. 1946

The Hon'ble the Minister
for Industries and Labour,
Government of Madras, M a d r a s.

Dear Sir,

ntinuation of our Memorandum
nd subsequent letter of 8th August regardi
ne restoration of theKollegal Silk Filature
Co,Ltd., to the Company, we have not receive
anything from you so far.

We beg to submit in this connection that in view of the short time available for the Company to file an appeal in the High Court, we request you for an early reply in the matter before the end of this month thus giving us an opportunity to do something in our endeavours. We, the signatories to this letter, have been

you for the restoration of their Factor on any particular conditions the Government may wish to impose and as such we are eage to know your directions in the matter which have now been delayed for long.

We once again request you for an immediate reply and in the meanwhile we remain,

Yours faithfully,

K Raghavendra Rao

D-in-Dept

TO US

Submitted for perusal. The memorandum of Sri T.R. Venkatarama Sastri dated 15.6.46 on behalf of M/s K.S.F. Kothari and Sons for the restoration of the Fisheries of the Company was circulated for orders to H.M. (S&L) and I

on 29-7-46. It is informally ascertained from H.P.M's Clerk that the file is still with H.P.M. In the circumstances it is for orders whether any action is called for on the letter at ppl=2 above. 29-30

28/8/46 28/8/46

Through L.(in Steno's absence the letter dated 8-8-46 was received in this section)

Not read with 29/8/46

S. H.M. (I.L.) may like to see this before it is sent to file.

28/8/46

I state my views on the file's subject.

31/8

TOUS

For orders whether this will be circulated to H.P.M in view of 'M' on

21/9/46

Waiting. We may await the return of the file from H.P.M.

THE

Madras Provincial Trade Union Congress

157, SARAFALI HOUSE
BROADWAY

Ref.

Madras, 4th Sept 1946.

To

The Minister for Labour and Industries.
The Government of Madras.

Sir,

I learn attempts are being made to purchase the silk factories of Kallaigal by private owners. There is a great possibilities of extensive silk weaving in South India and it will be a tragedy to allow this industry to pass on to private individuals.

The Handloom weavers who can get silk at reasonable cost from the Government will be thrown at the mercy of the greedy profiteers.

Considering the importance of the industry and its great possibilities, I urge upon the popular ministry to run the Kallaigal factory as at present and develope the silk industry in the province through a proper plan.

Thanking you,

Yours obediently,

General Secretary.
P Balachandra Menon

Copy to
The Press.

[illegible]

[illegible]

Submitted for payment
No accn sum called for as presume
as the main file deals with the proposal
is now with HPM.

D
9.46

DRS
8.9.46.

S. [illegible]
9.9.46

[illegible]

To

The Hon'ble the Prime Minister,
Government of Madras, M a d r a s.

Sir,

Sub: Kollegal Silk Factory - application for restoration of the same to the previous owners Kollegal Silk Filatures Limited.

Further to our detailed representations to the Hon'ble The Minister for Industries and Labour and the Chief Parliamentary Secretary, we now submit to you the following facts for your final consideration and favourable orders.

1) Though our Factory is equipped with 150 Basins and Government Factory is equipped with 486 Basins, the budget for the current year for the Government Factory reveals Rs.52,10,700 as expenditure and Rs.47,49,000 as income, showing a loss of Rs.4,61,900. The Government also have drawn a budget for Kollegal Silk Filature Factory and a profit of Rs.1,33,500 is estimated on the basis of a total expenditure of Rs.26,38,700 and total income of Rs.27,72,200. The total purchase of Cocoons in the case of Government Factory is Rs.48,00,000 and in the case of Kollegal Silk Factory Rs.24,00,000. Please note the rate of production and the efficiency of the Kollegal Silk Filatures and also the economy in the operation of the Factory and also compare the capacity of the Factory which in the case of Government Factory is more than 300 per cent of that of Kollegal Factory.

2) Even taking for purpose of argument profits of the previous year 1945-46, the figures are as follows:- The profit in the Government Filatures is Rs.1,08,006 whereas in Kollegal Rs.2,37,881.

3) If the two Factories had only been inspected by the Hon'ble Ministers they would have noted a clear difference in the fixed assets including machinery which are first class in the Company's Factory as against the poor class of Basins and the Structural work executed in the Government Factory. Besides this, the capitalisation of the Government Factory is about 300% higher than Kollegal having been constructed in war time. Hence, it will not be possible for the Government to make any headway and show profit by running the Government Factory at all.

4) From a study of the Mysore Silk Filatures Limited and Mysore Spuns Ltd., which are two neighbouring Silk producing Companies on the borders of British India, you will find from the capital invested in those Companies and as per the capacity of those Factories, it is possible to work a Silk Filature Factory at a profit. In fact, the Government had not been able to do so which may be due to several reasons but we do not want to give reasons therefor. It should be obvious that, when over the border and even in the neighbourhood, Silk Filature Factorie are able to work profitably the Government Factory cannot work at a profit at all or work at a profit not commensurate with energy and money spent on it.

5) We are categorical in our statement which we made to you and we re-affirm here that the sole object of the Government in trying to keep the Company's Factory with them without returning it to the owners i.e., ourselves, is to average up the loss or to show some profit with the credit of the Kollegal Silk Filatures for efficient and profitable working of the Industry. But for the fact that the Kollegal Silk Filatures Company is still being run by the Government the budget for 45-46 could not have disclosed any tangible profit nor would it reduce the loss in 46-47 budget. We emphatically state that the Director of Industries has put up this case deliberately to average up the inefficient working of the Government Factory by showing some return from the Factory or showing a lesser loss for obvious purposes.

We again reaffirm that Silk Filature business is not a monopoly business either in South India or in India. Mysore monopolises Silk business and over the borders of Mysore State Kollegal is able to compete with them only on the basis of efficiency and merit. Recently when Madras Government Factory did not desire to buy any Cocoons at more than controlled rates in British India, several lakhs were sold over the Border and the Mysore State Companies bought them and made all the profits as there was no such control in the Mysore State.

Initiative and enterprises were manifestly necessary and genuine risk had to be taken to build up Industry. The reason was that private Companies had to follow the prices of filature silk and get into contact with consumers andmake their own arrangements because they have to give return to the shareholders. Such contingency never arose for theGovernment.

The fact that the Silk Filature Company had been taken over during war time cannot determine the basis of nationalisation of Silk Industry, as the maintenance and control and utility of the Industry cannot be said to be for the welfare of the masses. Hence it is our submission that consistent with a national Government at Madras and Central Government at Delhi, there should be perfect freedom for commerce and business to thrive in all fields where the Government have no chance or desire to putting a scheme of nationalisation. This Industry is not for the benefit of the common man, for its products are for use of upper middle class or richer class. If at all the Government of Madras desire to maintain a Factory, it will be solely to justify the collossal waste of money they have made on the Government Factory the loss in which they want to lessen or convert into profits with the help of the profits from Kollegal Factory which have been built in prewar years under private enterprise.

We respectfully submit that this is not a field for Government ownership as in the case of Iron and Steel, Cement, Textiles, Transport, Public Utility, but may be a field for beneficial control with private management. We are willing to take all such guidance and sound advice and be guided accordingly in the management of this Company. May the Hon'ble the Prome Minister be pleased to order the return of the Factory to us?

An appeal in the High Court has to be filed before 10th instant and should the Hon'ble the Prime Minister order the restoration of the Factory before that date it will save needless and

P.T.O

endless litigation.

Thanking you in anticipation,

We beg to remain,

Sir,

Your most obedient servants,
For THE KOLLEGAL SILK FILATURES LTD.

M.S. Ganesaiyar

Managing Director.

Camp Madras,

D/4th Septr.1946

encl: copy of the extract
of the budget statement 1946-47

	Government Silk Filatures.		Kollegs : Filature.	
	1945-46 Actuals.	1946-47 Budgetted.	1945-46 Actuals	1946-47 Budgetted.
Pay of Manager	16,760	4,700	11,730	5,400
Office establishment	36,293	40,600	20,523	21,600
Dearness allowance etc.	1,78,213	1,76,100	12,817	12,300
Cost of cocoons	12,92,277	48,00,000	7,27,549	2400,000
Wages	49,232	1,08,000	1,45,742	1,44,000
Additions to buildings	98,262	3,000	26,522	7,000
Motor Power	42,367	45,700	17,965	15,000
Other items	43,890	32,800	32,890	33,400
Expense	21,52,304	52,10,900	9,95,738	26,38,700
Revenue	22,60,310	47,49,000	12,33,619	27,72,200
	1,08,006	- 4,61,900	2,37,881	+ 1,33,500

Loss —

Pro[illegible] —

DO Dept

To US

Sp/p

Submitted for perusal ~~The return~~ (file which the Question) ~~of~~. The main file regarding the restoration of the Fixtures with K.S.F. Co Ltd, Kottayam ~~has been examined~~ ~~which~~ is ~~still~~ with H.P.M. (Returned) may be awaited till 1.10.46. No other action ... 1A Called for on the present ~

SD
15.9.46
Asst
15.9.46

ABN
16.9.46

" above

It is informally ascertained from H.P.M's personal Clerk that the main file is still with H.P.M. It's ~~receipt~~ return may be awaited till 20.10.46

D
.10.46 Asst
2.10.46

ABN
2-10-46

199 [illegible] 43

Dur (D I) 20[illegible]

To A.S.

No 40173 D1/46

H.P.M

Submitted that the file has not yet returned from H.P.M. Its return may be awaited till 30.10.46.

21.10.46

21.10.46

To A.S.

No 40173 D1/46

H.P.M

Submitted that the [illegible] under question has not yet returned from H.P.M. Its return may be awaited till 18.11.46

30/10.46

30.10.46

pl. issue
A/13.11.46

Letter No 40173 Di/46 - 1 A/ 13.11.46

To

Sri K. Raghavachari,
Merchant, 310-11 Linghi Chetty Street
G. T. Madras.

Sir,

Sub: Kollegal Silk Filatures Ltd. —
Restoration of properties acquired
by the Govt of Madras.

Ref: Memorandum dated nil addressed
HH. (D. 4) & HJM. and your letter
dated 26. 8. 46.

I am directed to inform you that the Govt of Madras have decided to lease the Silk Filatures at Kollegal themselves and that your request for the restoration to the Kollegal Silk Filatures Ltd. of their

Dev Dept.

Memo No 40173 DI/46-5

Sub: Industries – Sericulture – Kollegal Silk Filatures, Kollegal – Requisitioned by Govt. – –

Ref: Memorandum presented by the Kollegal Silk Filatures Ltd thro' Sri T.R. Venkatarama Sastry

The Kollegal Silk Filatures Ltd are informed that their request to release their buildings, plants & machinery, requisitioned by the Govt. in 1943 cannot be granted and that the Govt propose to work the factory themselves –

4.11.46

To The Kollegal Silk Filatures Ltd thro' Sri T.R. Venkatarama Sastry, Advocate, Mylapore.

Copy to The Madras provincial trade union congress, 157, Sarojini House, Broadway.

Copy to Sri T.R. Venkatarama Sastry, Advocate, Mylapore, Madras.

properties acquired permanently cannot except be granted. complied with.

6.11.46

6.11.46

Development (DL) Department

Rx A. Subject: Industries - Sericulture - Kollegal Silk Filatures Kollegal - Acquisition by Govt. - Memorandum presented by Sri T.R.Venkatarama Sastry.

To A.S.

The memorandum presented by Sri T.R. Venkatarama Sastry on behalf of the Kollegal Silk Filatures, Kollegal at pages 1-14 c.f. and the minutes of H.M. (I. & L.) on page 1 at the top of 169-182 c.f. may be perused. Pages 15-17 c.f. is only a copy of the memorandum at pages 1-14 c. 162-180 and presented to H.P.M. Attention is also invited to H.P.M.'s minutes at M on page 15 c.f. 3/The memorandum however does not bear the signature of Sri T.R. Venkatarama Sastry. 2/In March 1943 the Govt. of Madras decided to requisition specific properties of the K.S.F. Kollegal under the provisions of the Defence of India Rule for promoting the manufacture of silk as an aid to war effort. The properties requisitioned were also acquired by the Govt. later as exhaustive improvements had to be effected to ensure maximum factory efficie and as it was not open to Govt. to recover any part of the costs incurred by them on the improvements if they had to return the Filatures to the owners at a subsequent date. The Company was paid compensation of Rs.79,961-7-0 which the Govt. considered being fair value for the properties acquired. The amount was received by the Company under protest. An arbitrato was accordingly appointed in G.O.No.2436 Development dated the 30-9-1943 for adjudicating the claims of the Company for proper compensation. The Arbitrator disallowed the claim to higher co pensation vide copy of the award at pages 105 to 129 of (Q). In March 1945 the Company instituted a suit against the Govt. to declare the acquisi proceedings as ultra vires. The District Judge Coimbatore tried the case has decided against the Company -- vide copy judgment at pages 153-167 of (Z).

3. The prayer of the Company now is that the building plants and machinery acquired by the Govt. be returned to it it be allowed to continue to manufacture silk. As regards t Legal opinion of Sri T.R. Venkatarama Sastry enclosed with the memorandum it is submitted that the matter was fully examined the Legal Department in March 1944. Please see their notes at

11-13 of G.O. Development dated 23.11.45. No new points ha
been adduced by the Company now in the memorandum to go again
into the question of the legality of the proceedings. In this
connection it may be mentioned that the Govt. recently purchase
the lands, buildings machinery and other eqipment of the G.S.F.
Kollegal from H.M.G.'s Government in U.K. and have also ordered
the amalgmation of the two filatures K.S.F. Kollegal and G.S.F
Kollegal with a view to run it as a single combined concern. The ques-
tion of applying for liquidation of the registered company K.S.F
Kollegal on the ground of its unsatisfactory financial position
is separately under consideration. In the circumstances it is
for orders whether any action is called for now on the request now
contained in the memorandum at pages 1-14 c.f.

12/7/46

G. O. No. 2436, Devt., dated 30.9.43 is put up in the file relating to the proposal for the liquidation of the K.S.F(C.No. 29859 L/46) which has been sent to ~~Finance~~ Legal for remarks.

With reference to 'B' above it is submitted that the question of issuing notices to the K.S.F for the payment of the sums due to Govt. in respect of the suits decreed against that firm is under consideration in C.No.29859L/46.

Through 'L'.
(i) To put up G.O. No 2436 dt 30.9.43
(ii) To note on the Legal position as regards 'B' above

15.7.46
15/7/46

No action seems necessary

17/7/46 S

The Company, having failed before the Arbitrator & the Civil Court has now come up to Govt for a reduction of its programme which Govt have complied & agreed during the year & cause maximum production. Whether this for parochial purposes. The history of the Company is a history of incompetence & mismanagement. The assumption of control

Development (DI) Department.

Re A.Subject: ...iculture - Kollegal Silk Filatures Acquisition by Govt. - Memorandum presented by Sri T.R.Venkatarama Sastry.

To A.S.

The memorandum presented by Sri T.R. Venkatarama Sastry on behalf of the Kollegal Silk Filatures, Kollegal at pages 1-14 c.f. and the minutes of H.M. on page 1 c.f. may be perused. Pages 15-17 c.f. is only a copy of the memorandum at pages 1-14 c.f. and presented to H.P.M. Attention is also invited to H.P.M.'s minutes at M on page 15 c.f. 2/ The memorandum however does not bear the signature of Sri T.R. Venkatarama Sastry. 2/ In March 1943, the Govt. of Madras decided to requisition specific properties of the M.S.F. Kollegal under the provisions of the Defence of India Rules for promoting the manufacture of silk as an aid to war effort. The properties requisitioned were also acquired by the Govt. later as exhaustive improvements had to be effected to ensure maximum factory efficiency and as it was not open to Govt. to recover any part of the cost incurred by them on the improvements if they had to return the Filatures to the owners at a subsequent date. The Company was paid compensation of Rs.79,960-7-0 which the Govt. considered as representing fair value for the properties acquired. The amount was received by the Company under protest. An arbitrator was accordingly appointed in G.O.No.2436 Development dated the 30-9-1943 for adjudicating the claims of the Company for proper compensation. The Arbitrator disallowed the claim to higher compensation vide the award at pages 105 to 129 of (Q). In January 1944 the Company instituted a suit against the Govt. to declare the acquisition proceedings as ultra vires. The District Judge Coimbatore who tried the case has decided against the Company -- vide copy of judgment at pages 153-167 of (Z).

3. The prayer of the Company now is that the building plants and machinery required by the Govt. be returned to it or it be allowed to continue to manufacture silk. As regards the Legal opinion of Sri T.R. Venkatarama Sastry enclosed with the memorandum it is submitted that the matter was fully examined by the Legal Department in March 1944. Please see their notes at

If the factories by Forte has benefited the
Scientific industry in the area & Schein it
how would. in may be well worth while
Cost Estimate & the interests of the Crown
Users in the area. Some remarks here as to the
Patent Clause for withdrawing the possibility to
their original areas. The Flow Drill Patents in
Kellogg belong to H. M. G. have been
bought by Forte & it is the intention now
& amalgamate with the principals & work
them as a single Unit. Competition in
the area is limited & this unfortunate &
Have two rival factories working in the
same area competing for the trade.

There is no question of obtaining the
items & power supplies for the workshop
in Post Orders & moreover the powers have
validly acquired. Nor is there is any justification
for telling the factory which has been supported
beyond Requisition & its M incompetent workers.
To do so would be retrograde.

The Company may be informed that the
Govt does not propose to retain the factory &
to work the factory themselves & that their request
cannot be granted.

[signature]
29/3/46

Yours sincerely
[illegible] H. M. (D.L.)
Yours always
in the interest of the
Trade

H. M.

would like for their
Yours both the Crowns as the matter was conducted & have the close
to see
I would like to see
as far as post is concerned
is representations of this appeal
post Cancellation & their
representations

29/10/46

also
[illegible]
[illegible]

From Sri K Raghavachari, Motor A/26.8.46 pp 27-32 c/f

From The Madras provincial Trade union congress, Broadway Letter D 4.9.46. pp 33-34 c/f

From the Kollegal Silk Filatures Ltd memorandum A/4.9.46 pp 35-38 c/f

(The orders in circulation at P2 above)

To U.S. - The letter from Sri K. Raghavachari at pp 29-30 c/f, the letter from the Madras provincial trade union congress at pp 33-34 c/f and further representations from the Kollegal Silk Filatures Ltd at pp 35-38 c/f may be perused with reference to the orders in circulation a draft memo is submitted for approval.

In view of the proposed action at 'A' above no separate action appears to be necessary on the letter of Sri K. Raghavachari and the further representation from the Kollegal Silk Filatures Ltd. For orders. pp 29-30 c/f pp 35-38 c/f

With reference to the letter from the Madras provincial Trade union congress, it is for orders whether a copy of the memo proposed at 'A' above may be sent. Subject to orders, they are noted in the address entry of the memo submitted below.

4.11.46

With reference to the orders in circulation, on P 3 above, a draft letter to the representation of the Kollegal Sri Silk Filatures, Ltd. is submitted for approval.

H.H. (J.L.) has minuted on P 1 c/f that he would send a copy to Mr T.R. Venkatarama Sastri Esq. this matter for orders whether H.H. (J.L.) would like to send a separate copy to Mr Sastri.

No copy to the Madras Provl Trade Union Congress on their letter at pp 33-34 c/f seems necessary as they are not directly concerned in the matter.

The draft letter below may issue if approved. For orders on 'A' above.

Add S. 7.11.46

6-11-46 approved & signed

Transmitted No 4073 DI/LL-7/47/13 N. dt. 13.11.46

Subs Suit as Suit filed by Kottegal Sida Alagaved
Case pairing Copies of the Draft &c. Map
of written Statement with the Court

Dw 11903 D/45 — Key : From the Govt Pleader, Coimbatore d 21.3.1945
pp 13-25 of — Jo Addl Issues and Notes on (D) from be perused &
pp 3-9 of (D) — Pleaders see the Copy of the
plaint pleading by Kottegal Sida Alagaved in
the case prepared by him against the Govt and
the orders issued in G.O. No 148 Ms. Dev. d 12.1.45
regarding the defence of the suit. The Govt Pleader
Coimbatore has submitted a copy of the written
statement prepared to be filed in the court
and which may be found in reply to the plaint.
pp 15-25 of (D) — gives with a memorandum explaining
the several points raised in the plaint and
the written statement for defence. Presumably
the Govt Pleader has prepared the statement
in consultation with the D.D.C, as directed in
the G.O. cited.

The facts of the case, as stated by
the Govt Pleader are correct generally. As
regards the paragraphs 17 to 21 of the memo
randum at pp 21-22 of (D), the information
contained therein is not susceptible of verification
from the records in the Secretariat. The information
has been embodied in para 11 of the written
pp 4-5 (N) — statement prepared by the Govt Pleader. It is
for orders whether para 11 of the written statement will
be allowed to remain as it is.

As regards A on p 24 of (D), the provisions
of Sec 80 C.P.C appear to have been satisfied
as the notice was received in the Secretariat
on 8.9.44 and the suit was filed only
two months after the date of service of the notice

The Legal aspects of the case are

dealt with by the Govt Pleader in paras 10-16
of the memorandum at pp 18-20 of the file
also stated that the case will be barred by paras 26-30 of
pp 23-24 of
the file

It is submitted that perusal of the
draft written statement
case may be delayed if Legal Dept
is approached for vetting the draft written Statement
The amendments are also required in pleadings
of draft written statement
the case may be sent to Legal Dept
for vetting of the draft written statement
and for remarks as to any further instructions
to be issued to the Govt Pleader in the defence

Dr
23-3-45

LEGAL DEPARTMENT.

Dr no
1190394-5
23-3-45

the plaintiff company in its
plaint at flag (D) are as

1) The plaintiff's business was an industrial undertaking within the meaning of Rule 81 of the Defence of India Rules and that the requisitioning and the subsequent acquisition by the Government under Rule 75-A of the Defence of India Rules of the lands, buildings, reeling basins, steam engins, boilers, pu... to amounted to the requisitionihg and acquisition of a going concern and was therefore beyond the Government's powers and consequently illega

2) The properties referred to above were integral and inseparable parts of the industrial undertaking and that the Government had no power under Rule 75-A to requisition or acquire them.

ASSISTANT SECRETARY I
1740
24 MAR 1945
LEGAL DEPARTMENT.

(3) Under Rule 81 of the Defence of India Rules, the Government can exercise only certain powers of control over the undertaking and such powers will not include a power to requisition or acquire the undertaking or the movable or the immovable properties belonging to the undertaking.

(4) Even if for any reasons it is held that the Government had a right to requisition the undertaking, it should be declared that they were not entitled to acquire the undertaking and that the Government should be directed to hand over possession of the same to the plaintiff company after the cessation of hostilities and six months thereafter, with compensation. The plaintiff company estimates the loss caused by the continued possession of the company's property by the Government at Rs.61,500 up to the date of the suit (at the rate of Rs.36,000 per year).

The plaintiff company therefore prays for a decree--

(a) declaring that the requisitioning and acquisition of the undertaking of the company and the movable and immovable properties which are part of the undertaking was ultra vires beyond the powers of the Government and therefore illegal,

(b) directing the Government to hand over possession of the undertaking and the properties, movable and immovable, to the plaintiff company or in the alternative, if the present possession by the Government is held to be valid, directing the Government to hand over possession of the undertaking after the war and six months thereafter,

(c) directing the Government to pay a sum of Rs.61,500 being the damages consequent on the illegal requisitioning and acquisition of the undertaking and the properties thereof up to the date of the suit, and to pay at the rate of Rs.3000/ a month up to the date of delivery of possession, and

(d) directing the Government to pay costs of the suit and subsequent interest.

It is needless to say that the written statement to be filed on behalf of the Government should categorically controvert the allegations made in the plaint and the

remedies claimed against them, unless of course any of them is proposed to be admitted. In this case none of the allegations extracted above is admitted by the Government. What the written statement should therefore bring out are--

(1) The going concern as such was not requisitioned in this case.

(2) Certain specified movable and immovable properties belonging to the plaintiff company were requisitioned under Rule 75-A of the Defence of India Rules as in the opinion of the Provincial Government it was necessary to do so for the efficient prosecution of the war. Rule 75-A of the Defence of India Rules clearly empowers the Government to requisition any property, movable or immovable, if in their opinion it is necessary so to do for the purpose aforesaid.

(3) Under Rule 75-A(2) it is open to the Provincial Government at any time to acquire any property which has been requisitioned under Rule 75-A(1) and it is not open to the plaintiff to claim a return of the properties so acquired either before or after the cessation of hostilities.

(4) Under Rule 75-A(4) compensation for any movable property requisitioned and acquired has to be fixed by the Provincial Government; and compensation in respect of an immovable property requisitioned and acquired has to be fixed (if the parties do not agree on the amount) by an arbitrator appointed by the Government under section 19(1) of the Defence of India Act. The compensation in this case was fixed in accordance with the aforesaid provisions.

(5) The compensation in respect of movable properties fixed under Rule 75-A(4) of the Defence of India Rules is final and cannot be challenged in any court of law. The compensation in respect of immovable properties under section 19(1) of the Defence of India Act cannot also be called in question by any suit.

(6) The plaintiff is not entitled to any damages and the damages claimed are excessive.

(7) The fact that it was open to the Government to exercise the power of supervision and control over an industrial concern under Rule 81 of the Defence of India Rules does not

preclude them from exercising their powers under Rule 75-A to requisition any movable or immovable property, if in their opinion it was necessary ~~or~~ expedient so to do.

(8) Section 16 of the Defence of India Act bars the present suit. In virtue of that section, no order made in exercise of any powers conferred by the Act or the Rules made thereunder can be called in question in any court. The suit is therefore not maintainable.

(9) The plaintiff is not entitled to any relief in the suit and that the Government should be awarded their costs in the suit.

The written statement to be filed on behalf of the Government should bring out the above points quite clearly. This may be communicated to the Government Pleader, Coimbator and he may be asked to prepare a fresh written statement incorporating these points (~~and~~ taking ~~any~~ adjournment of the suit to a convenient date). It seems to me that paragraphs 3, 4, 10 and 11 of the draft written statement at flag (N) are not necessitated by anything contained in the plaint and should therefore be omitted. I should not refer to the fact that the concern was working at a loss as a justification for the requisition and acquisition ~~and~~ our whole case is that we did not requisition the going concern at all but that we requisitioned only certain specific property, movable and immovable. Anything in the written statement which has the effect of weakening this position will prejudice the Government's case.

The Government's defence is quite simple and that is that they requisitioned and acquired certain specific items of property (movable and immovable) as they were of the opinion that it was necessary so to do for the efficient prosecution of the war ~~and~~ they have been clearly empowered to do so. They were not concerned with the question whether those properties belonged to a going industrial concern or whether the requisitioning and acquisition would have the effect of stopping the concern. The plaintiffs case is that wha

was acquired in effect is the concern itself and that/what is we should definitely controvert. The plaint just touches on the contention previously raised by Mr.T.R.Venkatarama Sastri, namely that Rule 75-A of the Defence of India Rules, in so far as it provides for acquisition of property, is ultra vires the rule making powers under the Defence of India Act. I have answered this and other points of law raised by Mr.Sastri (and repeated in the plaint) in my note at pages 11-13 n.f. of the linked file. That note may be useful to the Government Pleader when arguing the case for the Government, and possibly also for preparing his written statement.

24/MAR/45

Legal no 1740
2473

4 30 PM

19107

10 Secy

Notes of Legal Dept at pp 2-6 above.

As suggested at X on p 5 above, instructions may issue to the Govt Pleader for submitting a revised draft of written Statement. Meanwhile, the Govt Pleader may be asked to make an acknowledgement of the date. A draft Telegram is submitted for approval. After issue of telegram, a memo to the G.P will be sent for approval.

[Issued as Telegram no. 11903D/45-6 d 24.3.45]

To Addl n.s.

11 above: A draft memo (incorporating the suggestions contained in the Legal Dept's note above) to the Govt Pleader, Coimbatore is submitted for approval.

26/3/45

[Issued as Memo no. 11903D/45-7 d 26.3.45]

p 33 cf [from the Govt Pleader, Coimbatore, letter d 3.4.45]

To Addl. A.S.

Please see the letter at p35 cf. The revised draft written statement may be awaited till 10-4-45

p35 cf

Reference is invited specially to para 3 of the letter.

Fix on early R.D. The G.P. should not be allowed to take frequent adjournments for filing this statement

6/4/45 6.4.45

To Addl. A.S.

A draft reminder to the Govt. Pleader, Coimbatore is submitted below for approval

9/4/45 9.4.45

p37 cf [Issued as Memo no 119038/45 d 9.4.45]

p39 cf [from the Govt. Pleader, Coimbatore, Telegram d 10.4.45]

Addl. A.S.

Please see the telegram at p39 cf from the Govt. Pleader, Coimbatore. He presumably taking further time to file the written statement. Further communication from him may be awaited till 16.4.45

reminder Sahi p38 cf

11/4/45 11.4.45

p41 cf [from the Govt. Pleader, Coimbatore, letter no nil d 1.5.45]

To Addl. A.S.

With reference to the instructions issued to the Government Pleader, Coimbatore in the memo at pp 29-33 cf, he has submitted a revised draft Statement for the approval of the Government. The case may be sent to Legal Dept for advice whether the revised draft is drawn up in accordance with the previous notes at pp 2-6 above and whether it may be approved by the Govt.

p 43-46 cf

(The Govt Pleader has not reported anything about the date of the adjourned hearing. Perhaps the

Summer recess for the Court has commenced and the Leave will come off after the reopening of the Courts)

Legal.

Dw No. 11903 D/45-11
3.5.45

ASSISTANT SECRETARY 7-MAY 1945 2746C LEGAL DEPARTMENT

LEGAL DEPARTMENT.

The revised draft written statement at pp.43-46 c.f. has not touched points (4) and (5) raised in the note of this Department at p.4 ante.

The following alterations in the revised statement may be suggested:--

Para 4. In the place of the first sentence "As the Government of India was in urgent need ..... belonging to the plaintiff, under rule 75A of the Defence of India Rules, the following sentence may be substituted:--

"Certain specified movable and immovable properties belonging to the plaintiff's company were requisitioned under rule 75A of the Defence of India Rules as in the opinion of the Provincial Government it was necessary to do so for the efficient prosecution of the war.

Para 9. The portion of this paragraph beginning with the sentence "Rule 81 does not apply to the acquisition of the plaint properties" and ending with the sentence "The Government took steps under the provisions of rule 75A (1) and rule 75A (2) and did not act or purport to act under rule 81" may be omitted and in its place the following substituted:-

"The Government did not requisition or acquire any industri undertaking as pleaded by the plaintiff. The Government requisitioned and acquired only certain specified items of properties belonging to the company under rule 75A (1) and rule 75A (2) of the Defence of India Rules. The fact that it was ope to the Government to exercise the power of supervision and control over an industrial concern under rule 81 of the Defence of India Rules did not preclude them from exercising their powers under rule 75A to requisition and acquire any movable or immovable property if in their opinion it was necessary or expedient so to do."

Para ---. This paragraph may be omitted and in its place ollowing substituted:--

"Under rule 75A (4) compensation for any movable propert requisitioned and acquired has to be fixed by the Provincial Government; and compensation in respect of immovable proper requisitioned and acquired has to be fixed (if the parties do not agree as to the amount) by an arbitrator appointed by the Government under section 19 (1) of the Defence of India Act. The compensation in this case was fixed in accordance with the aforesaid provisions. The compensation in respect of movable properties fixed under rule 75A (4) of the Defenc of India Rules is final and cannot be challenged in any cour of law. The compensation in respect of immovable propertie under section 19 (1) of the Defence of India Act cannot also be called in question by suit."

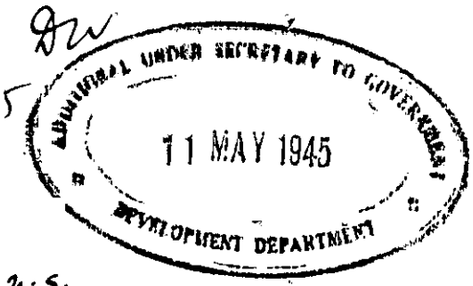
Para 20. The existing paragraph may be deleted and the lowing substituted:--

"(20) The suit is barred by limitation."

KLR 8/5/45 S. Per 8/5/45

alu-027462-1
8-5-45
with a.l.F for reference)

28064D/45



J. Addl u.s.

A clean copy of the draft written statement submitted by the Govt. Pleader, Coimbatore, as amended by Legal note at pp 8-9 above is submitted below for approval. ~~A draft memo to the Govt~~ The statement if approved may now be signed by the Secretary & sent to the Govt. Pleader Coimbatore for filing in the Dt. Court. A draft memo to the Govt. Pleader submitted below for approval.

A revised draft memo is submitted for approval

8/5 16.5.45 S. Pl may issue the draft WS as proposed

Issue P.C. 16/5/45

2 JKR 17.5.45

Issued as Memo no. 11903 D/45-12 d 21.5.45] p55 ½

11903 D/45-13 d 8.6.45] p57½

[From the Govt. Pleader, Coimbatore, letter d 17.6.45] p57½

[Issued as Memo 11903 D/45-14 d 2.7.45] p61

[From the Govt. Pleader, letter No Nil dated 11.7.45] p61½

[From the Dt. Judge, Coimbatore, D.O No Nil dated 16.7.45] pp62-66

To U.S.

Please see the letter at p61 of from the Govt Pleader Coimbatore and the D.O. from the Dt. Judge, Coimbatore at pp 62-66.

B on p61 of: The request of the Govt Pleader is rather vague. Reference is invited to para 2 of G.O. No. 448 Ms Dev d 12.1.45 in which the Govt Pleader was asked to peruse the records relating to the case in the Secty. Sometime back, in May 1945, he came over to the Secretariat and perused all the papers available in this office and he did not want any of them for production in the Court. The G.Os at (A), (B), (C), which are the records most relevant to the case, contain, besides the orders issued and communicated to the Dt Dr and the Govt, office notes and other discussions which are of a privileged nature not to be disclosed to outsiders. It does not seem necessary or proper that these original papers should be given over to the Govt Pleader. Certified copies with the proof of correctness of the duplicates would ordinarily suffice for the purpose of this Court, unless at the instance of the opposite party, the Court summons the production of original papers. Subject to the above remarks, it is for orders whether the Govt Pleader may be asked specifically to state the records he requires or to go over here to peruse the records again & obtain certified copies of such of the records as he may require.

✓ G.O. 311 M
G.O. 448 12
G.O. 2436 Be
Record for C.S. 481

Subject to orders, a draft memo to the Govt Pleader is submitted for consideration :-

A and B on p 68 cf and C on p 69 cf :

With reference to the order of the District Judge, Coimbatore at p 87 cf in the above case, the arbitration proceedings and the suit filed by the Respondents are fixed together for hearing. As the District Judge and the High Court see no objection to the arbitration proceedings being continued independently of the suit, there appears to be no objection to the Dt Judge taking up these proceedings, in his personal capacity as Arbitrator, during his leave. This may perhaps be agreed to with the concurrence of the High Court, Madras. Subject to orders, a draft D.O. to the Registrar of the High Court is submitted for approval.

2-7-65 D/43

As regards Mr. Chandhuri's request the doubtful point would seem to be as to whether or not he can complete the work during the two months' period of his leave. I presume he is not being re-posted to Coimbatore, and that the fee Mr. Thompson himself is going to Coimbatore. If the work is not finished in two months and Mr Chandhuri is posted elsewhere in the Presidency, the necessity for appointing another Arbitrator may arise at even a later stage again. The point perhaps merits discussion over the phone with Mr. Thompson. (I am not aware of the rules under which the Serving Judge, Coimbatore could not reasonably, or would not mean, be appointed ex officio Arbitrator?

L S Sinha

19.7.65

Mr Sen saw me yesterday & told me that he would like to finish the work in 2 months' time.

I have spoken to Mr Thompson about this. He says that Mr Chandhuri finishes Exports & the work is almost 4 weeks time before he is to take charge of the Court. He would like to finish it in that before leave expires. He does not mind.

[Issued as Memo no. 11903 D/45-15 d 19.7.45] pp 71-72 cf
[" D.O. no 11903 D/45-16 d 19.7.45] pp 73-74 cf
[From the Registrar, Madras High Court, D.No 3824/45-B2 d 23.7.45] p 75 cf

To S.S.

Please see the D.O. at pp 73-74 cf wherein representation of the Arbitrator and the reply of the Registrar, High Court thereto at p 75 cf are subject to orders, a draft memo permitting Sri C.S. Chandrasekhara Iyer Draft D.O. to Mr. Chandra Iyer to continue as Arbitrator even during his leave period is submitted below for approval.

(Previous papers read with Mr. Rau)

25/7/45 Sri Rao Bahadur C.S. Chandhuri, Dt. Judge Coimbatore was appointed as Arbitrator to decide the amount of compensation payable to the Kollegal Silk Filatures Ltd in respect of certain iron mines and marble properties acquired by the Govt under the D.O.I Rules. The enquiry is at present partly heard. Mr. Chandhuri proceeds on leave for 2nd August 1945 and he is not likely to be posted to Coimbatore on the expiry of the leave. In order to avoid a 'de novo' enquiry in the matter by his successor, Mr. Chandhuri suggested that he would complete the arbitration proceedings during the period of his leave, if he does not finish them before proceeding on leave. The High Court has no objection to this procedure. The suggestion is for approval of the Govt. Subject to orders, a draft D.O. to Mr. Chandhuri is submitted for approval.

Dy is one.

S. 26/7/45

26/7/45

S. 27/7/45

[Issued as D.O. no. 11903 D/45-17 d 27.7.45] p 77 cf
[Issued as Memo 11903 D/45-19 d 11-9-45] p 79 cf
[From the Govt. Pleader, Coimbatore, letter d 11-9-45] pp 81-82 cf

To Secretary

Please see the ~~memo~~ order ~~to the Govt. Pleader, Coimbatore~~ at pp 71-72 cf, ~~and the~~ letter ~~from him~~ at pp 81-82 cf from the Govt Pleader, Coimbatore

Copy of the letter at pp 87-82 of has been Communicated to the ~~D. & Cabs. The D. & C. may be requested to send certified~~ by asked to may come to give the information & docs. required by the Govt Pleader ~~for the documents listed at p82 cf and to permit and employees of the Railway Silk Factories to meet the Govt. Pleader desired at Coimbatore subject to rules~~, a draft mem

14/9/45 DSR 14.9.45

14.9.45

[Issued as Memo 11903 D/45-20, d. 14.9.45]

4 & 5 cf

4 & 5 cf [Copies of Memo to Govt Pleader, Coimbatore, letter d/14.9.45]

" 16.9.45

7 & 8 cf

To Secy.

~ see the Letters from the Govt Pleader, Coimbatore, at pp 85 & 87-88 cf.

Letter at pp 87-88 cf: Reference is invited to the memo issued to the D&C at pp 83 cf., copy being endorsed to the Govt Pleader. No documents with the Secy have so far been summoned. It is desirable that the Govt Pleader is informed that he should address the D&C for any information he requires. Subject to ord a draft memo to the G.P. is submitted for approval.

pp 83 cf

DSR 19.9.45

Let the Govt Pleader, by wire & indicate briefly the Records required for production in Court & that his letter is being forwarded & ~~for~~ Compliance of the Court's Order is awaited in Secretariat Vernacular Letter in hand

To Secy

A draft telegram to the Govt Pleader is submitted below for approval

19/9/45 DSR 19.9.45

[Issued as Telegram 11903 D/45-21 d 19.9.45]

From the D. & C. D+1-2160-42 d 19-9-45.

Please see the S.D.C.'s letter at p92c of. This letter at p92c is on the lines of our letters addressed by the Govt. Pleader to the Govt. at pp87-88c to which a telegraphic reply has already been sent.

No action as regards at p92c is perhaps called for, as a Copy of the telegraphic reply has been communicated to the S.D.C. Tuticorin.

The report on the progress of the Case from the Govt. pleader may now be awaited till 12.10.45. For orders.

23/9/45 Mr. Choudary's lease expires at about the end of this month, I think? It seems doubtful if Mr. Thompson's surmise as to completion of this work was correct.

For orders on 'X' above.

25 Aug

Ask the S.P. by wire whether he has received the documents which he should have forwarded in Court.

With reference to orders above, a draft telegram to the Govt. Pleader, Coimbatore is submitted below for approval

26/9/45 27/9/45

734 [Issued as Telegram no. 119039/45-22 d 27.9.45]

p95-96c [From the Govt Pleader, Coimbatore, letter no. nil d 30.9.45]

To U.S.

The telegram at p93c issued to the Govt. Pleader, Coimbatore, and his reply at pp95-96c may be perused.

The Govt. Pleader may be reminded about the progress of the Case on 30.10.45, if necessary

5/10/45 5.10.45

p97-98c [From the S.D.C., no. D.S. 2160/42 d 16.10.45]

To U.S.

Please see the S.D.C.'s letter at pp97-98c, enclosing the Govt. Pleader's letter d 8.10.45 at pp99-100c.

With reference to 'M' on p 100 cf, Legal may be requested to ~~furnish~~ say whether a Copy of the ~~judgment~~ decision required by the Govt. Pleader, Coimbatore, ~~if it~~ is available with them. ~~otherwise~~ If it is not available with them the Govt of Punjab may be addressed on the subject, as suggested by the D. Dt C. Meanwhile, the Govt Pleader, Coimbatore may be informed ~~to take further adjournment, if a copy of judgment referred to at 'M' on p 100 cf is deemed necessary for the conduct of the case~~ that steps are being taken to secure a copy thereof. Subject to orders, a draft telegram to the Govt. Pleader, Coimbatore is submitted below for approval. The case may be sent to Legal after issue of the draft telegram

Legal's (ai) (w.s.r. 'X' above)

22/23/10/45 DDS 23.10.45

[Issued as Telegram no. 119032/45-2 dt 23.10.45]

P 101 cf. 6441c

Dev n.o. 11903 2/45-2

23.10.45

ASSISTANT SECRETARY 25 OCT 1945 LEGAL DEPT.

M

Legal dept

The Federal court's decision in the case referred to at 'M' on p 100 C.F has not been reported in any of the Law journals received so far in this dept. Dept may be informed accordingly.

× AIR + ILR + Full Land Journals

Legal n.o 6441c-M sent 5-11-45

SM 31/10/45

5/11/45

DEV

6506/4D/45

SECRETARY 7 - NOV 1945 DEVELOPMENT DEPARTMENT

Dev. Dept

To n.s.

In view of the notes of the Legal Dept at M above, it is for consideration whether the Rule

of Punjab. may be addressed for a copy of the
circular of the Federal Court. Subject to orders, a
draft telegram is submitted for approval. (Reference is
also invited to M on p 100 cf from which it is
that the Govt Pleader is not anxious for the copy as being
very essential for the Case in progress).

Please see Pp 98-100 c.f. Read with
N.F. from P.14 above. For orders
as to whether it is considered
necessary to call for the copy
concerned. (Draft tentatively approved)

11.11.45 Sir may call for a copy.

[Issued as Telegram No 11903 D/14-5 dated 13.11.45 to Punjab Govt]
[from the Secy Punjab Govt Telegram No 687 dated 16.11.45].

To U.S.

The reply from the Govt of Punjab at p 105 cf may be perused.
This may be communicated to the DIGI and the
Govt Pleader, Coimbatore. Draft ends on p 106 cf is
for approval.

18.11.45 S(ai).

[From the Govt of Punjab, no 7418 EI-45/4620 d 16.11.45] p 1.1f
[From the Govt. Pleader, Coimbatore letter d 21.11.45] p 11 f
[" d 22.11.45] pp 11 f
[" d 23.11.45] p 11 f

To U.S.

The Copy of the agreement sent by the Punjab Govt. at
pp 109-112 cf is not relevant to the present case and need not
be communicated to the Govt Pleader, Coimbatore

C 1190 > VII 26/24/12

The report of the Govt Pleader on each days proceedings [at pp 113-118 of] are submitted for perusal. His further report may be awaited till 1.12.45. Legal may meanwhile see the Govt. Pleader's reports at pp 113-118 of

Mr 25/11/45 Asst 25/11/45

L.S 26/11/45 26/11/45

Legal

Legal Department.

Jan G.O. 11903 2/45-27 27.11.45

Seen in Legal.

29.11.45

ASSISTANT SECRETARY I
28 NOV 1945
LEGAL DEPARTMENT.

[From the Govt. Pleader, Coimbatore, letter d. 24.11.45] p 117

[" " " 26.11.45] p 121

[" " " Telegram d. 26.11.45] p 123 of

[From the D. I. & C, no. D5-2160/42 d. 27.11.45] p 125 of

al. no 7324-1 29-11-45

CE 3330/45

UNDER SECRETARY
30 NOV 1945
DEVELOPMENT DEPARTMENT

To A.S.

Please see the D.I.&C's letter at p 125 of the information in the telegram copy of which is sent by the D.I.&C has already been conveyed by the Govt. Pleader. The Copies of the judgment & decree may now be awaited from the Govt. Pleader till 10.12.45, as already ordered at A' on p 123 of

p 126 of
Dist p 123 of

Mr 3/12/45 Asst 4/12/45

[From the Govt. Pleader, Coimbatore, letter d. 14.12.45]

To A.S.

The further report of the Govt. Pleader, Coimbatore at p 127 of is submitted for perusal. The Copies of the judgment and decree may be awaited till 10.1.46.

Mr 21/12/45 Asst 21.12.45

Seen for perusal.

21.12.45

[From the ~~D. Judge~~, ~~Govt. Pleader~~, Coimbatore, letter dated nil-1-1946] pp 127-1

To A.S.

Please see the further report from the Govt Pleader, Coimbatore at pp 129-130 c/f. ~~The Copies promised at~~ ~~pp 129-130 of may be awaited till 17.2.46~~. It is for Consideration whether the papers should unnecessarily be kept pending for the receipt of the Copies of the Judgment. This case may perhaps be ~~about at~~ recorded now as a G.O. after making a Call Book entry against 1.4.46 for awaiting the receipt of report from the Govt Pleader, Coimbatore. For orders. 'X' whose may be opposed.

5/2/46

X C.B suits no. 626 d 9.2.46 made up on 1.4.46

C22103D/46
1.4.46

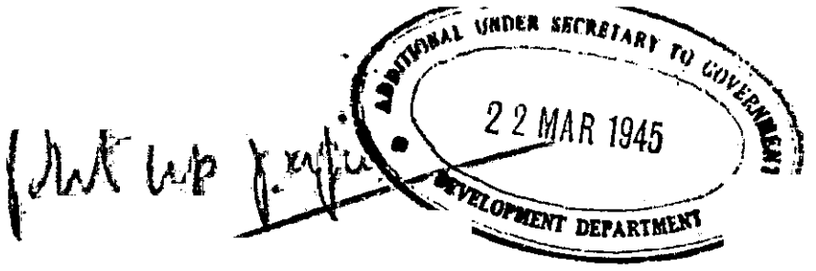
6.2.46

6/2/46 S. 8/2/46

G.O. 626 MS dg

sub: suits - Kellogg Silk Industries Ltd - O.S. no. 2 of 45 filed by Company against Govt of Madras - Defence Papers Recd

9.2.46



IN THE COURT OF THE DISTRICT JUDGE OF

C O I M B A T O R E

O.S.No. 1 of 1945

Kollegal Silk Filatures Ltd., :: :: Plaintiff

The Province of Madras represented by the Secretary to Government (Devolopment Department) : Defendant

WRITTEN STATEMENT ON BEHALF OF THE DEFENDANT UNDER ORDER VIII, RULE I OF THE CODE OF THE CIVIL PROCEDURE :-

The plaint is not correct and is not maintainable in law.

The allegations in the plaint are not admitted by the defendant. The plaintiff is put to strict proof of all the allegations in the plaint.

The allegations in paragraphs 3 to 11 of the plaint are not correct. As the defendant wanted to encourage sericulture in the Province, and as the owners of the silk factory at Kollegal were not able to carry on the business ~~effectively~~, the Government offered to subscribe for, and take, shares to the extent of 10 per cent in the capital of the Company, which was sought to be floated by the previous owners of the factor-

even after the factory was taken over by the Company in 1937, the factory was not working properly.

Messrs Siva & Son, the ~~three~~ New Managing Agents of the Company represented to the Government of India, (~~Department~~ Department of Supply) that the Company would be able to supply about 3000 to 4000 pound of good silk to the Government, from April 1942 to the end of December 1942. at Rs.15-10-0 per pound. Accordingly A a contract was entered into between the Company and the Government of India (Department of Supply) under which the Company agreed to supply 40000 Lbs of silk at Rs 15-10-0 per Lb, within 31-12-1942. But the progress of the Company in the production and supply of silk from the very beginning was not satisfactory. The Company applied for financial assistance. The Government of India (Department of Supply) gave an advance of Rs. 1,45,000 to the Company to be adjusted later on, for the value of silk, which may be delivered by the Company to the Government of India. Even inspite of the financial assistance of the Government of India the Company was not able to make any substantial progress in the production of silk.

As the Government of India was in urgent need of good silk for parachute fabric. and [as] it was feared, that the Company would not be able to supply the required quantity of silk to the Government, the defendant was obliged to pass orders on 12-3-43, for requisition of the immoveable and moveable properties belonging to the ~~Company~~ Company.

It is not correct to state that the reeling basins

the steam Engine, the Boilers, oil engines, and pumps were included as immoveable properties in the orders for requisition or for acquisitions. On the other hand, two separate Schedules, one for immoveables, and one for moveables, have been affixed to the above-said orders.

It is not correct to state, that the Company protested that the order of acquisition was illegal. On the other hand, the Company was claiming a larger amount as compensation, to be paid by the Government to the Company.

The plaintiff's allegations, that the Government ~~was~~ were not entitled to acquire the moveable and immoveable properties of the Company, is not correct; nor is it correct to state, that the Government were not entitled to take steps under Rule 75 A, to requisition and acquire the plaint properties.

It is not correct to state that the Government are not entitled to acquire the properties of an industrial undertaking. The Government are empowered to acquire the properties or the rights and interests, ~~th~~ commercial or industrial undertakings, under Section 19 of the Defence of India Act, and Section 299 of the Government of India Act.

The allegations in paragraph ~~12~~ 12 of the plaint are not correct. The plaintiff is not entitled to claim any amount as damages from the Government, as the acquisition of the plaint properties ~~were~~ was made by the Government

in good faith, and in pursuance of the powers conferred on the Government, under the Defence of India Act and the rules framed thereunder.

The amount of damages claimed is neither correct nor warranted. At the time of the requisition of the plaint properties, the Company had lost - whatever Goodwill, the Company had before; and the reputation of the Company was completely shaken by the internal dissensions among the directors and share-holders of the Company, and by the proceedings for misappropriation against Messrs F.L.Silva & Sons, the previous managing agents of the Company. The Kollegal Silk Factory, both before, and after, the Company was formed, was incurring losses, and the Company had not declared dividends for a number of years. But for the acquisition of the factory at the opportune moment by the Government, it was likely that the Company might have been wound up. If the Company had continued to work the factory after March 1943, the company would have been sustaining losses from year to year. In view of the above-said facts, it is not correct to state that the Company has been put to loss, on account of the acquisition of the properties of the Company by the Government.

In the year ending 30-6-1943, the Company had incurred losses to the extent of Rs 52,135-14-1. If the balance sheet for the year ending 30-6-43, ~~31-3-43~~, was taken into consideration, the Company would not be correct in claiming any damages from the Government, on the basis of accrued profits of the Company. After acquisition, the Company made applications to the Government of India, representing that the Company

had sustained heavy losses on account of its obligation to supply silk at ontract rate to the - Government of India, and requesting the Government of India, to pay the Company the difference in value between the contract rate, and the rate at which it had cost to the Company to produce and sell the silk The Government of India, in view of the fact, that th supply of silk by the Company was made in connection with the prosecution of the war, passed orders to pay a sum s. 85120-15-8 to the Company, which was in excess of the contract rate. It is not open to the Company to include the above-said sum for purposes of calculations of profit for the Company. It is only on the basis of the inclusion of this amount, that the company has made the claim for loss at Rs.3000/- per month. The above-said claim for loss of profits is highly excessive and wholly untenable.

The allegations in paragraph 13 of the plaint are not correct. The Government are entitled to requisition and acquire the properties of the Company, and they have taken possession of the said properties. The plaintiff is not entitled to claim possession of the plaint properties either now, or after the cessation of the hostilities, or six months thereafter.

The allegations in paragraph 14 are not correct. There is no cause of action for this suit.

The allegation in para 15 of the plaint is not correct. The suit has not been properly valued for purposes of jurisdiction and court fees.

The plaintiff is not entitled to file this suit in the Civil Court. ~~He~~ It is debarred from questioning the necessity ~~for~~ or the correctness of the orders of requisition and acquisition, in a civil Court, under Section 16 of the Defence of India Act. The plaintiff is therefore not entitled to ~~invoke~~ invoke the jurisdiction of this Court to question the validity or correctness of the above-said orders.

The suit as framed is not maintainable in law. The orders passed by the Government were made in good faith, and in pursuance of the Act and the rules thereunder.

It is not correct to state that the above-said orders and acts of the Government are illegal or ultra vires. The above-said orders and acts of the Government were made and done in good faith, and in pursuance of the powers vested in the Government, under the statutes.

As the plaintiff has not filed the suit within a year from 12-3-43, 16-3-43 and 30-3-43, the suit is barred by limitation.

The plaintiff is not entitled to any relief in this suit

The suit is therefore liable to be dismissed with costs.

I, the Secretary to the Government(Devolopment - Department) do hereby declare that what is stated in paras 1 to 20 are true to the best of my information obtained from the records in the office and I signed this on at Madras.

Defendant.

IN THE COURT OF THE

DISTRICT JUDGE OF COIMBATORE

O.S.No. 1 of 1945

WRITTEN STATEMENT OF THE DEFENDANT ~~XX XXXXXX XX~~ Under ORDER VIII, Rule I OF THE CIVIL PROCEDURE CODE:-

Presented on -3-45

Address for service

Sri. The Government Pleader
Coimbatore.

Ramnad note

Basis of Valuation for the acquisition of movable & immovable properties of the Kollegal Silk Filatures

Land and well.	at cost.
Buildings.	at cost. after allowing for 2.5% depreciation as per balance sheet on 31.
Plant and machinery	at cost as per balance sheet on 31.3.43 less depr. at 5%
Tools and Equipment	at cost as per balance sheet as on 31.3.43 less depn at 10
Scientific instruments	at cost as per balance sheet as on 31.3.43 less depn 10%
Furniture & dead stock	at cost as per balance sheet as on 31.3.43 less depn 12½
Carts & cycles	At cost as per balance sheet as on 31.3.43 less depn 10%
Live stock.	as valued on date

Compensation on a replacement basis was not accepted. Payment on the basis of book value less depn as indicated above was recommended by the Dist & accepted by the Govt

DR
22.8.45

From
F. . . Morris ESq. I.C.S,
Collector of Coimbatore,
Coimbatore.
Ref;1262/44 K.3.

To
The Secretary to Government,
Development Department,
M A D R A S.
Dated 16.12.46

Sir,

Sub: Kollegal Silk Filature - Suit - O.S.2/45 Recovery of cost Pleader's Fees.
Ref: Government Memorandum 20052.D/46 2 dated 5-4-46 to the Government Pleader, Coimbatore.

The Government Pleader has collected and credited a sum Rs.2258-10-0 into the Treasury on 30-7-46, being the recovery of cost allowed to Government by the arbitrator in O.S.2/45 on the file of the District Court, Coimbatore as per details given by him (copy of his lette enclosed) As there is discrepancy in the amount of cost allowed as per award and in the actual amount collected by the Government Pleader, he h been asked to furnish details. The amount has been credited to XXI Admin tration of Justice- Misc. Recovery. I solicit the favour of early instru tions regarding the correct head of credit and for making payment to the Government Pleader towards his fees out of the cost realised.

V.P.17.12. FOR COLLECTOR.

Copy of letter No. Nil. dated 31.7.46 of the Government Pleader, Coimbatore to the Collector of Coimbatore.

Sub: Kollegal Silk Filatures Ltd., Suit - O.S.2/45 District Court against the Government - Recovery costs -
Ref: Your Ref;1262/44 K.3.

I have recovered from the plaintiff a sum of Rs.2258-10-0 being the court costs awarded to the Government defendant in the above suit and costs of the execution proceedings and credited the amount into the treasury The chalan receipt dated 30.7.46 is herewith enclosed for your reference.

2. I request that my fee Rs.27-12-0 for the execution proceedings may be sanctioned and paid to me.

DETAILS FOR THE AMOUNT.

1.	The costs awarded to Government as per decree in O.S.2/45 District Court...	Rs.2211
2.	Expenditure incurred by me in the execution proceedings;	Rs. 18- 3- 0
3.	Vakil's fee.	Rs. 27-12- 0
	Total.	Rs.2258-10- 0

A separat bill for Rs. 17-3-0 for expenditure incurred by me the execution proceedings is sent to the District Judge Coimbatore to forwarded to you with a Court Certificate.

(True Copy)

FOR COLLECTOR.

TO US.

Please see the letter from the Coll. Cuimbatore at page 1 above. The Coll. requests to be informed regarding correct head of Credit

Rv sent for write

[illegible]

Memo No 98087 D1/46-2 d 29.1.47

Sub: Suits – Kollegal Sales Limited, Kollegal – Suit No O.S 2/45 on the file of the Dt Court, Coimbatore – Recovery of Costs – Pleaders' fees.

Ref Govt endt No 98087 D1/46-1 d 4.1.47.

—

The Dist is requested to show this reply to the endt cited above may be expected.

28.1.47.

To The Dist

R 20.2.47

Industries & Commerce Department.

From

A. Khaleeli Esq, I.C.S.,
Director of Industries
and Commerce,
Chepauk, Madras.

To

The Secretary to Government
Development Department,
Madras

SECRETARIAT 1 - FEB 1947 DEVELOPMENT DEPARTMENT

No.2160 DI/42 dated 5th Feburary 1947

Sir,

Sub: Kollegal Silk Filature, Kollegal, Suit No.O.S.2/45 recovery of cost.

Ref: Government endt. No.98087 DI/46-1 Development dated 4-1-4

The correct head of remittance in respect of the amounts realised by the Government Pleader, Coimbatore in both the suits nos. O.S.2/45 for Rs. 2258-10-0 and O.S.2/44 for Rs. 1752-6-0 is " 85 A. Capital outlay on Provincial Schemes of State Trading C. other Miscellaneous schemes - G. Kpii Kollegal Silk Filature, Kollegal 9- Deduct receipts and recoveries on capital account iii-other items." The Government Pleader, Coimbatore has already informed me that he has collected both the amounts and credited to the account of the Government. As however the Collector of Coimbatore has made reference to only Rs. 2258-10-0 as having been credited to XXI-Administration of Justice - Miscellaneous recovery" I request that Government may be pleased to address he Collector to credit the balance of both the amounts to the above head, afte paying the fees due to the Government Pleader.

for Director of Industries & Commerce

S.B/5-2

To

The Collr of Coimbatore

Dena

To U.S

Please see the letter from the Collr. of Coimbatore at p1 above and the remarks of the D.O.Lr at p5 above

A draft endt to the Collr. of Coimbatore is submitted ~~for approval. If approved, the same may be sent~~ on p5 above for approval.

~~Dena 6.2.47~~

The draft Endt on p5 ante may issue

AM 11.2.47

J.S. 11/2